

**NEW YORK STATE  
DIVISION OF HOUSING AND COMMUNITY RENEWAL  
STATEWIDE SECTION 8 VOUCHER PROGRAM**



**New York State  
Division of Housing and Community Renewal  
38-40 State Street  
Albany, New York 12207**

**2006 SECTION 8 ADMINISTRATIVE PLAN  
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## INTRODUCTION

**The overall mission of the New York State Division of Housing and Community Renewal (DHCR) and the Statewide Section 8 Program is to make New York State a better place to live by supporting community efforts to preserve and expand affordable housing, home ownership and economic opportunities, and by providing equal access to safe, decent and affordable housing.**

Within the overall mission of the agency, this Administrative Plan serves as the DHCR operational handbook for implementing the U. S. Department of Housing and Urban Development's (HUD) Section 8 Housing Choice Voucher (HCV) Program. This Plan has been prepared in such a manner as to ensure compliance with all requirements set forth in 24 CFR §982.54 (Administrative Plan).

In the implementation of the Section 8 Housing Choice Voucher (HCV) Program, DHCR acts as the Public Housing Agency (PHA) for all local programs under its purview. In this capacity as PHA, DHCR has full responsibility for the satisfactory completion of all contractual obligations with HUD. The Section 8 tenant-based assistance programs are federally funded and administered for the State of New York by DHCR through its Statewide Section 8 Program Office.

In order to effectively and efficiently implement the program over its entire Statewide jurisdiction, DHCR has contracted with Local Administrators (LAs) to undertake necessary field activities. Day-to-day responsibility for local administration of the HCV Program in the field is assumed by each LA in its designated local area of operation. The divisions of responsibilities are detailed in a contract between DHCR and each of its LAs.

The NYS DHCR/Statewide Section 8 Program is authorized to administer the Section 8/Housing Choice Voucher Program in the following NYS jurisdictions: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Nassau, New York (*Bronx, Brooklyn, Manhattan, Queens, Staten Island*), Niagara, Oneida, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Rockland, Saratoga, Seneca, Schuyler, Steuben, St. Lawrence, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Washington, Wayne, Westchester, Wyoming and Yates Counties. DHCR is also authorized to administer a mobility counseling program in Westchester County, the Enhanced Section 8 Outreach Program (ESOP).

Administration of the Section 8 Program and the functions and responsibilities of the DHCR staff will be in compliance with the DHCR Personnel Policy and HUD's Section 8 Regulations as well as all Federal, State and local Fair Housing Laws and Regulations.



### **Charges Against Section 8 Administrative Fee Reserve**

As a New York State government department, DHCR does not have a Board of Commissioners.

The Commissioner of DHCR or, for usual and customary business in the implementation of the Section 8 Housing Choice Voucher Program, the Commissioner's designee is responsible for review and approval of all proposed expenditures that may be made from an operating reserve for "other housing purposes."

## **Section 1.0 SELECTION AND ADMISSION POLICIES**

It is the policy of DHCR to ensure that all families who express an interest in housing assistance are given equal opportunity to apply and are treated in a fair and consistent manner. This section describes the policies and procedures for selecting and admitting families to the Statewide Section 8 Housing Choice Voucher (HCV) Program including completion of a pre-application for assistance, placement and/or denial of placement on the waiting list and limitations on who may apply.

Unless otherwise approved by DHCR (and HUD if regulatory waiver is required), these selection and admission processes apply to all local program areas in DHCR's Statewide Program jurisdiction. If Local Administrator (LA) experience determines that local preferences and/or other selection practices present obstacles that unreasonably diminish the opportunity of persons in that local program area to apply and/or be selected for admission, the LA will be responsible for providing documentation necessary to modify or waive local preference(s) or other selection criteria.

Documentation will be in a form and content prescribed by DHCR (and HUD if such approval is also necessary) and must clearly establish that the needs of local program area applicants and participants would be better met by addition, elimination or modification of any existing local preference or other selection criteria.

As applicable, DHCR and/or HUD-approved modifications to these selection and admission policies will be attached to this plan for each local program area.

### **1.01 Preferences**

All federal preferences have been eliminated effective January 1, 2004, except for the selection of elderly, disabled and handicapped singles before other singles.

### **1.02 Opening the Waiting List**

Each LA will utilize the following procedures for opening the waiting list:

When the LA determines that there is an insufficient number of applicants on its local waiting list, the LA will advertise through public notice in local media of general circulation and any available minority media in the LA jurisdiction. The public notice will state any limitations to who may apply. The notice will contain:

- the dates, time, and location where families may apply;
- the programs for which applications will be taken;
- the specified period (if any) for which applications will be received by the LA; and
- a brief description of the program.

The notices will be made in an accessible format if requested. Notices will provide potential applicants with information that includes: LA address and telephone number, how to submit an application, and general information on eligibility requirements.

After the closing deadline (if any) for accepting applications and if requested by a person with a disability, additional time will be given as a reasonable accommodation for submission of an application.

### **1.03 Closing the Waiting List**

The LA may discontinue receiving applications if there are enough applicants to fill anticipated openings for the next **24** months. A local waiting list may **not** be closed if to do so would have a discriminatory effect inconsistent with applicable civil rights laws.

The LA will announce the closing of the waiting list by public notice.

### **1.04 Purging the Waiting List**

The LA will update and purge its waiting list annually to ensure that the pool of applicants reasonably represents families still actively interested in Section 8 HCV assistance. Purging should also enable the LA to update information regarding address, family composition, income category and preferences.

Prior to the purging of the waiting list, all applicants will be notified by mail. Before removing an applicant from the waiting list due to the applicant's failure to respond to the initial contact letter, a second letter must be mailed to the applicant. If the applicant does not respond to the second notice within ten (10) business days, the name of the applicant will be removed from the waiting list.

Purging is only required for applicants that have been on the waiting list for 12 months or more. The name and address of each applicant must be typed or written on the original contact letter. Letters must include the name and address of the applicant notified.

The LA should advise applicants to provide updated contact information in writing. Applicants will be advised that they will be removed from the waiting list if they cannot be reached at the address provided on the initial application.

When the purge is initiated, a letter will be sent to the applicants in the order in which they appear on the waiting list. The number of applicants on the waiting list should be equal to 50% of the LA's current program size. The letter will indicate that the purpose of the contact is:

- to determine applicant interest in remaining on the waiting list; and
- to offer the family an opportunity to update any information previously provided to the LA.

The contact letter will require the applicant to provide return correspondence in the following circumstances:

1. the applicant wishes to be removed from the waiting list, or
2. the applicant wishes to update information currently on file provided by the LA to expedite return of requested information.

Contact letters returned by the Post Office as undeliverable will be grounds for removing an applicant from the waiting list.

The LA will compare results of the purge to regular annual program participant attrition rates. If the initial purge results in an inadequate number of applicants to offset regular program attrition rates, the LA will conduct additional outreach until it is determined that there are sufficient numbers of active applicants.

#### **1.05 Removal of Applicants from the Waiting List**

The LA will not remove an applicant's name from the waiting list unless:

- the applicant requests, in writing, that his/her name be removed;
- the applicant fails to respond to a written request for information;
- correspondence is returned to the LA by the Post Office as undeliverable;
- the applicant misses 2 or more scheduled appointments; or
- the applicant does not meet either program eligibility or screening criteria.

#### **1.06 Grounds for Denial**

The LA will deny assistance to applicants who:

1. do not meet any one or more of the eligibility criteria;
2. do not supply information or documentation required by the application process;
3. fail to complete any aspect of the application or lease-up process;
4. have a history of criminal activity by any household member involving crimes of physical violence against persons or property, or any other criminal activity, including drug-related criminal activity, that would adversely affect the health, safety or well being of other participants or staff, or cause damage to the property;
5. currently owe rent or other obligations to any housing authority in connection with the public housing or Section 8 programs;
6. have committed fraud, bribery, or any other corruption in connection with any Federal housing assistance program, including the intentional misrepresentation of information related to their housing application or benefits derived therefrom;

7. have a family member who was evicted from federally assisted housing within the last five years;
8. have a family member who was evicted from assisted housing within five years of the projected date of admission because of drug-related criminal activity involving the illegal manufacture, sale, distribution or possession with the intent to manufacture, sell or distribute a controlled substance as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802;
9. have a family member who is illegally using a controlled substance or abuses alcohol in a way that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents. The LA may waive this requirement if:
  - the person demonstrates to the LA's satisfaction that the person is no longer engaging in drug-related criminal activity or abuse of alcohol;
  - the person has successfully completed a supervised drug or alcohol rehabilitation program;
  - the person has otherwise been rehabilitated successfully; or
  - the person is participating in a supervised drug or alcohol rehabilitation program.
10. have engaged in or threatened abusive or violent behavior towards any LA staff member;
11. have a family household member who has been terminated under the Pre-Merger Certificate or Voucher Programs or Housing Choice Voucher Program during the last three years;
12. have a family member who has been convicted of manufacturing or producing methamphetamine;
13. have a family member with a lifetime registration under a State sex offender registration program; or
14. are a welfare-to-work (WTW) family that fails to fulfill its obligations under the welfare-to-work voucher program.

These circumstances governing denial of assistance to applicants shall also be applicable to any and all instances wherein a participant family wishes to admit an additional family member who meets any of the above conditions.

### **1.07 Notification of Negative Actions**

Any applicant whose name is being removed from the waiting list will be notified in writing by the LA that he/she has ten (10) business days from the date of the written correspondence to request an informal review. The letter will also indicate that the applicant's name will be removed from the waiting list if he/she fails to respond within the time limit specified.

The LA's system of removing applicants' names from the waiting list will not violate the rights of persons with disabilities. If an applicant's failure to respond to a request for information or updates was caused by the applicant's disability, the LA will provide a reasonable accommodation. If the applicant indicates that he/she did not respond due to a disability, the LA will verify that the applicant is disabled.

An example of a reasonable accommodation would be to reinstate the applicant on the waiting list based on the date and time of the original application.

### **1.08 Pre-application Procedures**

Each LA will utilize a pre-application in a form provided or approved by DHCR. Other than such assistance as may be necessary to reasonably accommodate a disabled or handicapped person, the applicant will be responsible for completing all sections of the pre-application.

The primary purpose of the pre-application intake function is to gather pertinent eligibility information on applicants. This process will also be utilized by LAs to provide such information to applicants as may be necessary to ensure accurate and timely decisions concerning eligibility and to expedite provision of assistance to eligible families.

Prospective applicants may either complete the pre-application at the LA's office or request that one be sent to them for completion and return.

The pre-application will contain at least the following information:

1. head-of-household name, address, and phone number;
2. dates of birth and Social Security numbers for all family members (except family members who do not have a Social Security number);
3. DHCR/LA selection preferences (if any);
4. racial or ethnic designation of the head of household;
5. annual gross income for each family member; and
6. date application was submitted.

Upon receipt in the LA's office, the date and time of each pre-application will be recorded on the pre-application form. Persons submitting pre-applications will not be required to attend an interview; information on the pre-application will be accepted on a "self-certified" basis until the applicant is contacted for a pre-selection final eligibility determination. Incomplete pre-applications will be returned to a family, together with a statement of what information is necessary to complete the pre-application.

Each person submitting a pre-application will receive written acknowledgment of receipt of the application from the LA. As further described below, the acknowledgment will indicate the applicant's tentative eligibility status.

Applicants who have submitted a complete pre-application and have been determined to be preliminarily eligible for Section 8 HCV assistance will be placed on the waiting list until assistance is available. In the acknowledgment letter, the LA will briefly indicate the steps that will follow after the applicant's name has been placed on the waiting list.

If an applicant is determined ineligible based on the information provided in the pre-application, the LA will notify the family in writing (in an accessible format upon request as a reasonable accommodation), state the reason(s), and inform the family of its right to an informal review. Persons with disabilities may request to have an advocate attend the informal review as a reasonable accommodation.

### **1.09 Applicant Status While on Waiting List**

All applicants who are placed on the waiting list will be informed of their responsibility to report changes in address within 30 days of occurrence. Applicants will also be required to report changes in income, family composition and/or other items potentially affecting applicant eligibility. Applicants will be notified that, if the LA is unable to contact the family due to its failure to promptly submit a change of address notification, it may result in its name being dropped from the waiting list. Applicants will also be dropped from the waiting list if they fail to respond to written requests for information or action within LA-specified time frames.

Exceptions will be granted for applicants with disabilities, as defined in 24 CFR §5.403 who were not able to respond within the time frame due to their disability. Exceptions may also be granted for applicants hospitalized for sufficient duration to be the cause of the lack of response.

Extenuating circumstances may include but are not limited to: hospitalization of participant, household member(s) or immediate family member; death or illness of family member, et al.

### **1.10 Time of Selection**

When funding is available, families will be selected from the waiting list in sequence, regardless of family size, subject to income targeting requirements.

### **1.11 Income Targeting Requirement**

The same income targeting rule that applies to participant-based vouchers also applies to project-based vouchers (PBV). The 75% targeting requirement is a combined factor for any LA with both participant-based and project-based vouchers.

LAs are responsible for ensuring that, in any given year, of the **combined total** of participant-based and project-based admissions, not less than 75% of admissions must be families with incomes at or below 30% of area median.

DHCR's "targeting year" is the same as its program fiscal year of April 1 through March 31. LAs should look at the previous year's admission activity to determine the overall percentage of families admitted who were at or below 30% of median. No adjustments to administrative practices will be necessary if it is considerably above 75%.

DHCR does not grant waivers of the income targeting policy for which an owner or landlord can apply.

In order to ensure that the targeting requirements are met on an overall basis, it is necessary that LAs meet these requirements on an individual basis. However, DHCR may exercise its discretion to modify this requirement on an "as needed" or individual basis, in view of the initial impact on targeting that may result from PBV move-ins.

For PBV vacancies, LAs must continue doing everything possible to admit families with incomes at or below 30% of median. However, upon written request to DHCR, the LA is permitted to raise the targeting income ceiling to 50% of area median income if the LA can demonstrate that sufficient families at the 30% of area median income level are not available. In this situation, LAs should primarily, **if not solely**, admit families having incomes at or below 30% of area median income to participant-based HCV openings, until the overall percentage of the LAs annual admissions equals or exceeds 75% of families at this income level.

### **1.12 Selection of Families from the Waiting List**

Unless otherwise approved by DHCR (and HUD if such approval is necessary), the selection of participants in all LA Program jurisdictions will be according to the following local selection order:

- For participant households with more than one family member, selection will be based on date and time of pre-application.
- For single person households, persons who are elderly, disabled, handicapped or displaced will be selected before other single person households.

The qualification for the above listed preference and/or any subsequent preferences that may be added is based solely on an applicant's status **at the time of selection from the waiting list**.

LAs must not ask an applicant claiming disability to specify the exact nature of (or state or explain) his/her disability, nor does the applicant have to submit proof of said disability; documentation can only state that the applicant is disabled.



Notwithstanding the above, if necessary to meet the statutory requirement that 75% of newly admitted families in any fiscal year be extremely low-income families (unless a different target is agreed to by HUD), the LA retains the right to skip higher income families on the waiting list to reach extremely low-income families. This measure will only be taken if it appears the goal will not otherwise be met. To ensure this goal is met, DHCR and each LA will monitor incomes of newly admitted families and the incomes of the families on the waiting list.

If there are an insufficient number of extremely low-income families on the waiting list, the LA will conduct outreach on a non-discriminatory basis to attract sufficient numbers of extremely low-income families in order to reach the statutory requirement.

### **1.13 Selection of Families from the Waiting List for Project Based Units**

This section pertains to LAs with current project-based developments or LAs that have been approved for project-basing of vouchers. All LAs should fully familiarize themselves with Project-Based Voucher Program, Final Rule (24 CFR Part 983) issued, October 13, 2005.

When a project-based unit becomes vacant, participants **MUST** be referred from the LA's tenant-based waiting list. The only exception to this requirement is when an LA does not refer a sufficient number of families to an owner within 30 days of owner notification of a vacancy. In such circumstances, the owner may solicit applications from potentially eligible families who must then be certified as eligible by the LA.

LAs are not to accept owner referrals unless they have been unable to successfully place families from their own waiting list. If an LA feels that an owner is inappropriately rejecting families referred from the LA's waiting list, the LA should bring this to the attention of its DHCR Statewide Section 8 Program Representative.

### **1.14 - First-Year Limitation on Where Family Can Lease a Unit**

Although not a residency preference to be used for determining the order of selection, the Statewide Section 8 Program has established a policy governing where a "non-resident" applicant may live during the first 12 months after he/she is initially admitted. This policy has been established per the provisions of Section 982.353 of Program regulations.

For the purposes of this section and its applicability to DHCR's Statewide Program, a "non-resident" applicant is one in which neither the head of household or spouse had a "domicile" (legal residence) in the jurisdiction of **a specific Local Administrator** when the family first submitted the pre-application for participation in the program.

For the purposes of this Administrative Plan, the term "Legal Domicile" is defined as follows: *"The legal residence of the household head or spouse as determined in accordance with State and local law."* New York State case law defines domicile as *"one's [the household head or spouse] principal and permanent place of residence where he/she always intends to return to from wherever he/she may be temporarily located and from which he/she has no present*

*intention of moving. In other words, the 'domicile' is the location where a person intends to make his or her home indefinitely."*

Under those circumstances, families will be advised that, if contacted for admission to the local program wherein they were a non-resident at the time of application, they must utilize the assistance for 12 consecutive months in the jurisdiction of the program where they are being admitted. All non-resident applicants will be advised of this:

- when receipt of their pre-application is acknowledged by an LA; and
- when the family is contacted to establish an eligibility certification interview.

The following example illustrates how this policy is implemented:

An applicant who lives in the jurisdiction of "Local Administrator A" applies to the program in the jurisdiction of "Local Administrator B" and is determined to be eligible for placement on the waiting list of "Local Administrator B". When the family is admitted in the program area of "Local Administrator B", the family will be required to utilize the assistance in that area for 12 months before it will be eligible for portability.

### **1.15 Initial Eligibility Certification**

At the point of selection from the waiting list, all adult household applicants will be required to participate in an initial eligibility certification interview. Single persons who claim that they are elderly, disabled, handicapped or displaced must have that status verified prior to the LA's scheduling of the initial eligibility certification interview.

Information used to verify an applicant's eligibility at initial certification for the HCV program must be current, that is within 60 days of the issue date of a voucher. Upon verification of the applicants' information, the LA must update the electronic "Applicant Data Sheet" for each applicant. A copy of the "Applicant Data Sheet" must be maintained in each applicant's file.

After a preference is verified, applicants will be required to participate in a full eligibility certification interview with an LA representative. The certification and briefing interview afford the LA an opportunity to discuss the family's circumstances in greater detail, to clarify information which has been provided by the family, and to ensure that all required information is accurate and complete. The briefing phase of the interview is used as a vehicle to provide information about the certification and verification process, as well as to advise the family of other PHA services or programs which may be available.

At the certification interview, the applicant will be required to furnish complete and accurate information requested by the interviewer. The LA representative will initially complete the certification based on written and/or verbal information provided by the applicant.

At the conclusion of the certification interview, the applicant will sign and certify that all information is complete and accurate.

### **1.16 Requirement to Attend Interview**

All adult family members are required to attend the interview and sign the eligibility certification. Exceptions may be made for students attending school out of state or for members for whom attendance would be a hardship.

The head of household or the head and spouse are required to attend the interview. If the head of household cannot attend the interview, the spouse may attend to complete the certification and certify for the family. However, the head of household will be required to attend an interview within three days to review the information and to certify by signature that all of the information is complete and accurate. If an applicant misses a scheduled appointment, does not contact the LA to reschedule, cannot be contacted by the LA to reschedule or misses two scheduled meetings, the LA will reject the pre-application and the applicant will be removed from the waiting list.

If an application is denied due to failure to attend the full certification interview, the applicant will be notified in writing and offered an opportunity to request an informal review.

Reasonable accommodation will be made for persons with a disability who require an advocate or accessible offices. A designee will be allowed to participate in the interview process, but only with permission of the person with a disability.

The head of household and spouse will be required to sign the certification form and/or a supplemental form/worksheet containing the family composition, income, asset and allowance information for the family. As required by the LA, other adult members may also be asked to sign these forms.

**All** adult members must sign:

- HUD Form 9886 (Release of Information);
- any supplemental forms and/or documents required by the LA;
- declarations and consents related to citizenship/immigration status; and
- a consent form to release criminal conviction records and to allow the LA to receive records and use them in accordance with HUD regulations.

Applicants may also be required to sign specific verification forms for information which is not covered by HUD Form 9886. Failure to do so when required will be cause for denial of the application for Section 8 assistance.

If the LA determines during or after the interview that additional information is needed directly from the applicant, the LA will specify in writing what information is required and what kind of documentation must be provided by the applicant to verify it. The family will be given ten

business days to supply requested information. If the information is not supplied in this time period, the LA may deny assistance.

#### **1.17 Portability Move-Ins from Other PHAs**

If an LA has available funds to absorb a participant family it may do so. If an LA does not have available funding to absorb a participant family, the LA must bill the initial PHA for the portability move-in.

#### **1.18 Verification**

All income and asset information provided by the applicant will be verified via third-party contact unless repeated attempts to provide such verification fail. If the LA is unable to obtain third-party verification, the LA will specify what other form of verification may be acceptable within the guidelines specified by HUD. Any verification requested directly from the applicant must be provided within the time specified by the LA.

#### **1.19 Final Determination and Notification of Eligibility**

After verification is completed, the LA will make a final determination of eligibility. This decision is based upon information provided by the family, verification activities undertaken by the LA and current eligibility criteria in effect. If the family is determined to be eligible, the LA will confirm eligibility via written notification to the family. If a briefing has not already been conducted by the LA, one will be scheduled to coincide with issuance of the Housing Choice Voucher.

## **Section 2.0 ISSUING VOUCHERS**

After all family information has been verified, eligibility has been determined and the family has been briefed regarding general program rights and obligations, the LA will issue the Housing Choice Voucher (HCV). At this point the family begins its search for a unit.

### **2.01 Voucher Term**

The initial term of the voucher must be 60 days and must be stated on the voucher. The LA may grant one or more extensions of the term but the initial term plus any extensions must not exceed 180 calendar days from the initial date of issuance, except as specified in Section 2.04 below.

The family must make a reasonable effort to locate a unit throughout the initial 60 day period and/or any subsequent extensions. If necessary, the family may seek the assistance of the LA. The LA is responsible for informing the family of the requirement to maintain a search record after the first 30 days of the search. If the LA fails to do so, they may not deny the extension of the voucher on the basis that the family did not make a reasonable effort to locate a unit.

### **2.02 Voucher Expirations**

Upon expiration of an HCV, the LA must inform the applicant or participant in writing that the voucher has expired. The applicant may reapply if the LA waiting list is open or at the point it is reopened by the LA.

If a voucher has expired, has not been extended by the LA or expires after an extension, the family will be denied assistance. As allowed by program regulations, a decision by the LA **not** to extend a voucher is not subject to an informal hearing.

### **2.03 Suspensions**

Suspension or tolling of the time that an applicant spends locating a unit is **not** permitted.

### **2.04 Extensions**

#### ***Section 2.04.1 - Routine Extensions:***

If a family makes a request in writing prior to the expiration date of a voucher, the LA will grant extensions on a 30 days-per-extension basis up to a maximum of 180 calendar days.

#### ***Section 2.04.2 - Reasonable Accommodation Extensions:***

If a family needs and requests an extension as a reasonable accommodation to make the program accessible to and usable by a family member with a disability, the LA will extend the

term up to an additional 60 days beyond the 180 days. In such cases, the initial term plus any extensions must not exceed 240 calendar days from the initial date of issuance.

If additional extensions are needed in excess of the 240 days for family members with disabilities, such requests must be submitted to DHCR in writing by the LA. Each request will be evaluated on a case-by-case basis.

#### ***Section 2.04.3 - Extensions Due to Extenuating Circumstances:***

Prior to granting any of the following voucher extensions, the LA must obtain documentation to substantiate the basis for his/her approval of the extension.

- (1) The LA must grant a 30-day extension of the voucher beyond the 180 days if extenuating circumstances, such as hospitalization, or a family emergency for an extended period of time, affected the family's ability to find a unit within the initial term or previously extended term. A written request for such extension must be submitted within 30 days of the expiration of the voucher.
- (2) A 30-day extension of the voucher must also be granted under the following circumstances:
  - (a) A family member submits a "Request for Tenancy Approval" prior to the expiration of the voucher. After the submission of the Request for Tenancy Approval, the landlord/owner rescinds the agreement and the 180 days have expired; or
  - (b) After the submission of the Request for Tenancy Approval and the completion of the HQS inspection, the landlord/owner refuses to correct the HQS deficiencies and the 180 days have expired.

### **2.05 LA Assistance to Voucher Holders**

Families who require additional assistance during their search may call the LA office to request assistance. Voucher holders will be notified at their briefing session if the LA maintains and updates a listing of available units and how the updated list may be obtained.

The LA will assist families in negotiations with owners and provide other assistance related to the families' search for housing.

After the first 30 days of the search, the family is required to maintain a search record and report to the LA every 30 days. The search record will be in a form prescribed by DHCR and the LA.

## **2.06 LA to LA Moves**

In the case of a move between Local Administrators, if the LA has available funding, the LA will absorb. If the LA does not have sufficient funding to absorb, the LA *must* call DHCR for guidance.

## Section 3.0 SPECIAL ADMISSIONS

### **3.01 Special Purpose Programs**

The DHCR Statewide Section 8 Housing Choice Voucher (HCV) Program currently operates the following special purpose programs in some, but not all, LA jurisdictions:

- Family Unification Program
- Mainstream with Disabilities Program

Pursuant to HUD requirements that special purpose programs be targeted to families with specific characteristics, DHCR and LAs will use targeted funds solely for their intended purpose(s).

Therefore, families with targeted characteristics may be selected from the waiting list before non-targeted families who applied before them. In the selection of families with targeted characteristics within the overall group of other families with similar targeted characteristics, families will be selected in the same order of preference as are those families on the regular waiting list.

### **3.02 Disaster Recovery**

When a Federal or State disaster declaration is made in any area of New York State wherein DHCR locally administers a Section 8 HCV Program, DHCR may, according to the specific needs resulting from each disaster, make vouchers available to respond to disaster needs.

When DHCR invokes the disaster recovery policy, LAs may utilize any available new or turnover assistance to assist families.

From existing DHCR Section 8 Annual Contributions Contract (ACC) authority, vouchers may be allocated to local programs per the following terms, conditions and necessary steps:

1. On the basis of demonstrated need in each local program area, LAs may request additional Section 8 vouchers from DHCR for families/persons that have been either **permanently or indefinitely** displaced as a result of a Federal or State declared disaster **and** that meet all normal program eligibility guidelines.
2. If/when disasters occur, DHCR will notify HUD that this provision of DHCR's Public Housing Agency (PHA) Plan and Administrative Plan is to be invoked.
3. During the term of the Federal or State disaster declaration, income-eligible families already on local program waiting lists will be given first preference in the selection process. Other families affected by the disaster, but who are not on waiting lists, will be added to the list and given the same preference.



4. To be considered for Section 8 assistance, verification of a participant's displacement status **must** be provided by an agency or individual capable of rendering an official decision (for example, codes officer, building/permits officer, etc.). This process must establish that a participant/person has been displaced and that such displacement is of such permanent, indefinite or extended duration that Section 8 is a necessary and appropriate resource.
5. A complete determination of participant eligibility must be made as soon as possible by the LA in conjunction with the damage/displacement assessment.
6. DHCR will advise LAs when:
  - the overall supply of vouchers has been depleted; or
  - DHCR determines that the situation has stabilized to the point where interim vouchers will no longer be made available.
7. Vouchers will be returned to DHCR when families utilizing them:
  - lose eligibility per normal operating procedures (i.e, 30% of participant income equals the unit's gross rent); or
  - are terminated from the program for non-compliance or any other reason. LAs will be notified if there are any changes to these provisions for returning vouchers to DHCR.
8. Use of this special form of voucher disaster assistance is predicated on the understanding that once a participant receives a voucher, that assistance may **not** be considered for any fixed term (e.g., six months, one year, etc.); eligibility for continued assistance is handled like that of any other participant in the Section 8 program.

## Section 4.0 OCCUPANCY POLICIES

### **4.01 Definition of Groups of Persons That May Qualify as a Family**

1. A **participant with or without children**. Such a family is defined as a group of people related by blood, marriage, adoption or affinity that lives together in a stable family relationship.
  - Children temporarily absent from the home due to placement in foster care are considered participant members.
  - A first unborn child and children in the process of being adopted are considered participant members for purposes of determining bedroom size, but are not considered participant members for determining income limit.
  - In cases where a parent has joint custody where the child/children reside with the parent at least 50% of the time, the LA must consider such child/children in determining the voucher (unit) size for the participant. The 50% custody arrangement must be verified and documented. If both parents are participants in the Housing Choice Voucher Program (DHCR Local program or another PHA), only one of the parents is allowed to claim the child/children as a dependent.
2. An **elderly family**, which is:
  - a family whose head, spouse, or sole member is a person who is at least 62 years of age;
  - two or more persons who are at least 62 years of age living together; or
  - one or more persons who are at least 62 years of age living with one or more live-in aides.
3. A **disabled family**, which is:
  - a participant whose head, spouse, or sole member is a person with disabilities;
  - two or more persons with disabilities living together; or
  - one or more persons with disabilities living with one or more live-in aides.
4. A **displaced family** is a family in which each member or sole member has been displaced by governmental action, or whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.
5. A **remaining member of a tenant family** may qualify as a family.

6. A **single person**, who is not an elderly or displaced person, a person with disabilities or the remaining member of a tenant family, may qualify as a family.

#### **4.02 Family Guests**

Participants in the Housing Choice Voucher program are permitted to have a guest or guests in the household.

If the guest resides in the unit for more than a total of 30 days in a calendar year, the guest(s) will be considered unauthorized household member(s). When this occurs, the LA must enforce DHCR and HUD policies addressing this matter.

#### **4.03 Definition of When an Applicant Is Considered to Be Continuously Assisted**

An applicant is considered to be continuously assisted under the United States Housing Act of 1937 if the family is already receiving assistance under any 1937 Act program when the family is admitted to the Section 8 Housing Choice Voucher Program.

## **Section 5.0 ENCOURAGING PARTICIPATION IN AREAS OF NON-CONCENTRATION**

In all local areas of DHCR's Statewide Section 8 Program where there are significant concentrations of low income and/or minority families, additional efforts will be taken to recruit and retain owners in non-impacted areas.

In each affected local area, DHCR and its LAs will clearly delineate areas of concentration and neighboring areas outside these areas of concentration. These efforts by DHCR and/or its LAs will include establishing maps that show various areas and information about facilities and services in neighboring areas such as schools, transportation and supportive and social services.

Utilizing experience gained in DHCR's special-purpose mobility counseling program in Westchester County (Enhanced Section 8 Outreach Program--ESOP), LAs in similarly impacted areas will utilize the following measures as appropriate to increase owner participation in areas outside of minority or poverty concentration:

1. making direct contact with landlords;
2. providing written information promoting the benefits of owner participation in the Section 8 Housing Choice Voucher Program;
3. providing historical evidence of overall community benefits derived via deconcentration efforts;
4. holding formal and/or informal discussions and meetings with landlord groups;
5. meeting with rental referral companies or agencies; and
6. meeting with fair housing groups or agencies.

## **Section 6.0 ASSISTANCE TO FAMILIES CLAIMING DISCRIMINATION**

It is the policy of DHCR's Statewide Section 8 Housing Choice Voucher (HCV) Program to ensure that participating or prospective owners fully comply with all Federal, State, and local nondiscrimination laws; the Americans with Disabilities Act; and the U. S. Department of Housing and Urban Development regulations governing Fair Housing and Equal Opportunity.

No person shall, on the grounds of race, color, sex, religion, national or ethnic origin, familial status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the Statewide Section 8 Housing Choice Voucher Program.

LAs will provide Federal/State/local information to applicants for and participants in the Section 8 HCV Program regarding discrimination and any recourse available to them if they believe they may be victims of discrimination. Such information will be made available with the application. All applicable Fair Housing Information and Discrimination Complaint Forms will be made available at both DHCR's Statewide Section 8 Program office and at the offices of each LA. In addition, all appropriate written information and advertisements will contain the appropriate Equal Opportunity language and logo.

The LA will assist any participant who believes he/she has suffered illegal discrimination by providing him/her with copies of the housing discrimination form. The LA will also assist the participant in completing the form, if requested, and will provide him/her with the address of the nearest HUD Office of Fair Housing and Equal Opportunity.

The LA will advise families regarding how to file a complaint if they believe they have been discriminated against by an owner. The LA will advise the participant to make a Fair Housing complaint. The LA may also report the owner to HUD (Fair Housing/Equal Opportunity) or the local Fair Housing organization.

## **Section 7.0 PROVIDING PARTICIPANT INFORMATION TO PROSPECTIVE OWNERS**

Upon request by the owner, the LA will provide the owner with:

- the participant's current and prior address as shown in the LA's records; and
- the name and address (if known by the LA) of the landlord at the participant's current and prior addresses.

The same types of information will be supplied to all owners upon the owner's request.

## **Section 8.0 DISAPPROVAL OF OWNER**

The LA will deny participation by an owner at the direction of HUD. The LA may also deny an owner's participation for any of the following reasons:

1. The owner has violated any obligations under a Section 8 Housing Assistance Payments Contract;
2. The owner has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program;
3. The owner has engaged in drug-related criminal activity or any violent criminal activity;
4. The owner has a history or practice of non-compliance with HQS for units leased under Section 8 or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other Federal housing program;
5. The owner has a history or practice of renting units that fail State or local codes;
6. The owner has not paid State or local real estate taxes, fines, or assessments;
7. The owner refuses (or has a history of refusing) to evict families for drug-related or violent criminal activity, or for activity that threatens the health, safety or right of peaceful enjoyment of the premises by tenants, LA employees or owner employees, or neighboring residents;
8. The owner is the parent, child, grandparent, grandchild, sister, brother or any member of the family of an applicant seeking the initial use of a voucher (currently shopping), unless the LA determines that approving the unit would provide reasonable accommodation for a participant member who is a person with disabilities; or
9. There exist other conflicts of interest under Federal, State, or local law.

## **Section 9.0 DENYING ADMISSION OR TERMINATING ASSISTANCE FOR CRIMINAL ACTIVITY OR ALCOHOL ABUSE**

Members of an applicant or participant household must not abuse drugs or alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and/or persons residing in the immediate vicinity of the premises.

If the criminal activity or alcohol abuse (as specified below) occurred within one year of the initial lease-up of an applicant or participant family, the LA will deny or terminate assistance if either of the following occurs:

- The LA finds that a member of the household has demonstrated a pattern of drug or alcohol abuse that threatens the health, safety or right to peaceful enjoyment of other residents and/or persons in the immediate vicinity of the premises.
- The LA finds that a current household member was convicted or incarcerated for any alcohol-related or drug-related criminal activity that took place on or near the premises.

The LA may permit the participant family to continue receiving assistance, provided that household members determined to have engaged in the proscribed activities will not reside in the unit. If the violating member is a minor, the LA may consider individual circumstances with the advice of Juvenile Court officials.

The LA may waive the decision to deny or terminate assistance if:

- the person responsible for the prohibited action demonstrates successful completion of a credible rehabilitation program approved by the LA; or
- the circumstances leading to the violation no longer exist because the person who engaged in prohibited drug-related or alcohol-related activity is no longer in the household due to death or incarceration.

If assistance is to be denied or terminated as outlined above, the denial/termination will be based upon either of the following:

- Preponderance of Evidence - defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.
- Credible Evidence - defined as evidence provided by police and court systems such as drug raids, drugs found in the dwelling unit, evidence which is tied to the activity, warrants issued, arrests made, etc.



## **Section 10.0 SUBSIDY STANDARDS**

### **10.01 Determination of Family Unit (Voucher) Size**

The LA will issue a voucher for a specific bedroom size-bedroom size is a factor in determining the family's level of assistance. The following guidelines will be used to determine each family's unit size without overcrowding or over-housing:

#### ***Zero Bedroom:***

- 1 adult

#### ***One Bedroom:***

- 1 adult
- 2 adults (spouse or cohabitants)

#### ***Two Bedroom:***

- 1 adult, 1 child
- 1 adult, 2 children (same sex)
- 1 adult, 2 children (opposite sex, **both** 5 years or younger)
- 2 adults (spouses or cohabitants), 1 additional adult
- 2 adults (spouses or cohabitants), 1 child
- 2 adults (spouses or cohabitants), 2 children (same sex)
- 2 adults, 2 children (opposite sex, **both** 5 years or younger)
- 2 adults (spouses or cohabitants), 2 adults (spouses or cohabitants)

#### ***Three Bedroom:***

- 1 adult, 2 children (opposite sex)
- 3 adults (not spouses or cohabitants)
- 1 adult, 2 children (same sex), 1 child (either sex)
- 2 adults (not spouses or cohabitants), 2 children (same sex)
- 2 adults (not spouses or cohabitants), 2 children (opposite sex, **both** 5 years or younger)
- 2 adults (spouses or cohabitants), 2 adults (not spouses or cohabitants)
- 2 adults (spouses or cohabitants), 2 children (same sex), 1 child (either sex)
- 2 adults (spouses or cohabitants), 2 children (same sex) 2 children (same sex)
- 2 adults (spouses or cohabitants), 4 children (all same sex)
- 2 adults (spouses or cohabitants), 4 children (opposite sex, **all** 5 years or younger)

#### ***Four Bedroom:***

- 4 adults (not spouses or cohabitants)
- 2 adults (not spouses or cohabitants), 2 children (opposite sex)

- 1 adult, 2 children (same sex), 2 children (opposite sex)
- 3 adults (not spouses or cohabitants), 2 children (same sex)
- 1 adult, 2 children (same sex), 2 children (same sex), 1 child (either sex)
- 2 adults (spouses or cohabitants), 2 children (same sex), 2 children (opposite sex, 5 years or younger)
- 2 adults (spouses or cohabitants), 2 children (same sex), 2 children (same sex), 1 child (either sex)
- 2 adults (spouses or cohabitants), 2 children (same sex), 2 children (same sex), 1 adult
- 2 adults (spouses or cohabitants), 2 children (same sex), 2 children (same sex), 2 children (same sex)
- 2 adults (spouses or cohabitants), 2 children (opposite sex, 5 years or younger), 2 children (opposite sex, 5 years or younger), 2 children (opposite sex, 5 years or younger)
- 2 adults (spouses or cohabitants), 6 children (opposite sex, **all** 5 years or younger)

The LA does not determine who shares a bedroom/sleeping room, but there must be at least one person per bedroom on the voucher. The LA's subsidy standards for determining voucher size shall be applied in a manner consistent with Fair Housing guidelines. For subsidy standards, an adult is a person 18 years old or older.

All standards in this section relate to the number of bedrooms on the voucher, not the family's actual living arrangements.

The unit size on the voucher remains the same as long as the family composition remains the same, regardless of the actual unit size rented.

Generally, the LA assigns one bedroom to two people within the following guidelines:

- Persons of different generations, persons of the opposite sex (other than spouses), and unrelated adults should be allocated a separate bedroom.
- Separate bedrooms should be allocated for persons of the opposite sex (other than adults who have a spousal relationship and children under five years old).
- Foster children will be included in determining unit size only if they will be in the unit for more than one month.
- Live-in attendants will generally be provided a separate bedroom. No additional bedrooms are provided for the attendant's family.

Space may be provided for a child who is away at school but who lives with the family during school recesses. Space will not be provided for a family member, other than a spouse, who will be absent most of the time, such as a member who is away in the military.

Adults of different generations will have separate bedrooms. A single pregnant woman with no other family members must be treated as a two-person family. A parent and child should not be required to share the same bedroom when the child is six years old or older.

These standards are based on the assumption that each bedroom will accommodate no more than two persons. In determining bedroom size, the LA will include the presence of the first child to be born to a pregnant woman, children who are in the process of being adopted, children whose custody is being obtained, and children who are temporarily away at school or temporarily in foster-care.

The LA may grant exceptions to normal occupancy standards in accordance with the provisions in Section 10.02.

The family unit size will be determined by the LA in accordance with the above guidelines and will determine the maximum rent subsidy for the family; however, the family may select a unit that may be larger or smaller than the family unit size. If the family selects a smaller unit, the payment standard for the smaller size will be used to calculate the subsidy. If the family selects a larger size, the payment standard for the family unit size will determine the maximum subsidy.

#### **10.02 Exceptions to Subsidy Standards**

The LA may grant exceptions from the subsidy standards if the family requests and the LA determines the exceptions are justified by the relationship, age, sex, health or disability of family members, or other individual circumstances.

The LA will grant an exception upon request as an accommodation for persons with disabilities.

Circumstances may dictate a larger size than subsidy standards permit when persons cannot share a bedroom because of a need such as a verified medical or health reason or elderly persons or persons with disabilities who may require a live-in attendant.

#### **10.03 Request for Exceptions to Subsidy Standards**

The family may request a larger voucher than indicated by the LA's subsidy standards. Such request must be made in writing within 30 days of the LA's determination of voucher size. The request must explain the need or justification for a larger voucher. Documentation verifying the need or justification will be required as appropriate.

The LA will not issue a larger voucher due to additions of family members other than by birth, adoption, marriage or court-awarded custody. Requests based on health-related reasons must be verified by a licensed medical doctor.

#### **10.04 Errors in Subsidy Standards**

If the LA commits an error in the bedroom size designation, the family will be issued a voucher of the appropriate size.

#### **10.05 Changes for Applicants**

The voucher size is determined prior to the family's briefing by comparing the family composition to the established LA subsidy standards. If an applicant requires a change in voucher size, based upon established LA subsidy standards, the guidelines in Section 10.01 will apply.

#### **10.06 Changes for Participants**

The members of the family residing in the unit must be approved by the LA. The family must obtain approval from the LA for any additional family member before the new member occupies the unit, except for additions by birth, adoption, or court-awarded custody, in which case the family must inform the LA within 30 days of occurrence. The above-referenced guidelines in Sections 10.01 and 10.03 will apply.

#### **10.07 Underhoused and Overhoused Families**

If a unit does not meet Housing Quality Standards (HQS) space standards due to an increase in family size (unit too small), the LA will issue a new voucher of the appropriate size.

The LA will also notify the family of the circumstances under which an exception will be granted, such as:

- if a family with a disability is underhoused in an accessible unit;
- if a family requires the additional bedroom because of a health problem, which has been verified by the LA; or
- the LA and family have been unable to locate a unit within 180 days.

#### **10.08 Ineligible Housing**

The following types of housing are not assisted under the DHCR Statewide Section 8 Housing Choice Voucher Program:

- a public housing or Indian housing unit;
- a unit receiving project-based assistance under a Section 8 program;

- nursing homes, board and care homes, or facilities providing continual psychiatric, medical or nursing services;
- college or other school dormitories;
- units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions;
- a unit occupied by its owner (this restriction does not apply to cooperatives or to assistance on behalf of a manufactured home owner leasing a manufactured home space); or
- a unit receiving any duplicative Federal, State, or local housing subsidy (this does not prohibit renting a unit that has a reduced rent because of a tax credit).

The LA will not approve a lease for any of the following special housing types, except as a reasonable accommodation for a family with disabilities:

- congregate housing;
- group homes;
- shared housing;
- assisted living facilities; or
- single room occupancy housing.

## **Section 11.0 FAMILY ABSENCE FROM THE DWELLING UNIT**

The family must supply any information or certification requested by the LA to verify that the family is living in the unit or, if the family is absent from the unit, it must provide any LA requested information or certification on the purposes of family absences.

The family must cooperate with the LA for this purpose. The family must promptly notify the LA of its absence from the unit.

Absence means that no member of the family has resided in the unit for 30 or more days. The family must request permission in writing from the LA for absences that will exceed 30 days. The LA will make a determination in writing within five business days of the request. An authorized absence may not exceed 180 days. Any family absent for more than 30 days without authorization will be terminated from the program.

Authorized absences may include, but are not limited to:

- prolonged hospitalization;
- absences beyond the control of the family (e.g., death in the family, other family member illness); or
- other absences that are deemed necessary by the LA.

## **Section 12.0: DETERMINING ASSISTANCE IF A FAMILY BREAKS UP**

In those instances where a family assisted under the Section 8 program becomes divided into two otherwise eligible families due to divorce, legal separation or the division of the family; the new families cannot agree as to which new family unit should continue to receive the assistance; and there is no determination by a court, the LA will consider the following factors to determine which of the families will continue to be assisted:

- which of the two new family units has custody of dependent children;
- which family member was the head of household when the voucher was initially issued (listed on the initial application);
- the composition of the new family units and which unit includes elderly or disabled members;
- whether domestic violence was involved in the breakup;
- which family members remain in the unit; and
- recommendations of social service professionals.

Documentation of these factors will be the responsibility of the requesting parties. If documentation is not provided, the LA will terminate assistance on the basis of failure to provide information necessary for a recertification.

### **12.01 Remaining Member of Tenant Family**

To be considered the remaining member of the tenant family, the person must have been previously approved by the LA to be living in the unit.

A live-in attendant, by definition, is not a member of the family and will not be considered a remaining member of the family.

In order for a minor child to continue to receive assistance as a remaining family member:

- the court has to have awarded emancipated minor status to the minor; or
- the LA must have verified that social services and/or the Juvenile Court has arranged for another adult to be brought into the assisted unit to care for the child (or children) for an indefinite period.

A reduction in family size may require a reduction in the voucher family unit size.

## **Section 13.0 INFORMAL REVIEW PROCEDURES FOR APPLICANTS**

### **13.01 Preference Denials**

If the LA denies a preference to an applicant, the applicant will be notified in writing of the specific reason for the denial and will be offered the opportunity for an informal **meeting** (not an informal review) with LA staff to discuss the reasons for the denial.

The person who conducts the meeting will be an employee of the LA who is at or above the level of the employee but not the employee who made the decision.

### **13.02 Informal Review Procedures for Applicants**

The LA will give an applicant for participation in the Section 8 Program prompt notice of a decision denying assistance to the applicant. The notice will contain a brief statement of the reasons for the decision and will state that the applicant may request an informal review within ten business days of the denial and will describe how to obtain the informal review. An applicant should be given an opportunity to submit a written request to reschedule an informal review. The applicant will be granted only one opportunity to reschedule an informal review. The informal review must be conducted within 30 days from the date of the notice.

### **13.03 When an Informal Review is Not Required**

The LA will not provide the applicant an opportunity for an informal review for any of the following reasons:

1. a determination of family unit size under the LA subsidy standards;
2. LA determination not to approve an extension or suspension of a voucher term;
3. LA determination not to grant approval to lease a unit under the program or to approve a proposed lease;
4. LA determination that a unit selected by the applicant is not in compliance with Housing Quality Standards (HQS), including reasons related to family size or composition;
5. general policy issues or class grievances; or
6. discretionary administrative determinations by the LA.



#### **13.04 Informal Review Process**

The LA will give an applicant an opportunity for an informal review of the LA's decision denying assistance to the applicant.

Reviews are provided for applicants who are denied assistance before the effective date of the HAP contract. The exception is that when an applicant is denied assistance for citizenship or eligible immigrant status, the applicant is entitled to an informal hearing.

When the LA determines that an applicant is ineligible for the program, the family must be notified of their ineligibility in writing. The notice must contain:

- the reason(s) they have been determined ineligible;
- the procedure for requesting a review if the applicant contests the decision; and
- the deadline or time limit for requesting a review.

When denying admission for criminal activity as shown by a criminal record, the LA will provide the subject of the record and the applicant with a copy of the criminal record upon which the decision to deny was based.

The LA will provide applicants with the opportunity for an informal review of decisions denying:

- listing on the LA's waiting list;
- issuance of a Voucher;
- participation in the program; and
- assistance under portability procedures.

#### **13.05 Procedure for Review**

A request for an informal review must be received in writing by the close of the business day, no later than ten business days from the date of the LA's notification of denial of assistance. The informal review will be scheduled within five business days from the date the request is received. The informal review must be conducted within 30 days from the date of the notice of denial.

The informal review may not be conducted by the person who made or approved the decision under review, nor a subordinate of such person.

The review may be conducted by any of the following:

- a staff person who is at the Casework Supervisor level or above;
- the Program Director or Executive Director (if not the same person who made the initial decision to deny assistance); or
- an individual from outside the LA.

The applicant will be given the option of presenting oral or written objections to the decision. Both the LA and the family may present evidence and witnesses. The family may use an attorney or other representative to assist the family at its own expense. The review may be conducted by mail and/or telephone if acceptable to both parties.

A notice of the review findings will be provided in writing to the applicant within fourteen days after the review. It will include the decision of the review officer and an explanation of the reasons for the decision.

All requests for a review, supporting documentation, and a copy of the final decision will be retained in the applicant's file.

### **13.06 Mitigating Circumstances for Applicants with Disabilities**

When applicants are denied placement on the waiting list or the LA is terminating assistance, the family will be informed that presence of a disability may be considered as a mitigating circumstance during the informal review process.

Examples of mitigating circumstances are:

- A person with a cognitive disorder may not have understood the requirement to report increases in income.
- A person may not understand the need to make regular repayments on a promissory note.
- Minor criminal records for public drunkenness may be due to medication; prior incarcerations for being disorderly may be emotional disorder.

### **13.07 USCIS (formerly INS) Determination of Ineligibility**

**NOTE: THE U. S. Department of Immigration and Naturalization Services has been renamed and is now under the U. S. Department of Homeland Security. The agency is now known as the U. S. Citizen and Immigration Services and will be represented in this Plan as USCIS.**

If a family member claims to be an eligible immigrant and the USCIS SAVE system and manual searches do not verify the claim, the LA will notify the applicant within ten days of his/her right to appeal to the USCIS within thirty days or to request an informal hearing with the LA, either in lieu of or subsequent to the USCIS appeal.

If the family appeals to the USCIS, it must give the LA a copy of the appeal and proof of mailing or the LA may proceed to deny assistance. The time period to request an appeal may be extended by the LA for good cause.

### **13.08 Restrictions on Assistance to Non-Citizens**

Assistance to an applicant will not be delayed or denied if:

- on the basis of immigration status if the applicant, within all requirements and/or dates specified by Section 5.508 of program regulations, takes all necessary steps to provide required documentation;
- the LA has not completed primary and secondary verification of immigration documents submitted by the applicant in a timely manner;
- if the USCIS appeals process under Section 5.514 has not been completed;
- if the ineligible family member has left the household; or
- assistance to the applicant will be prorated;

Assistance to an applicant will be denied if:

- if a declaration of citizenship and eligible immigration status is not submitted by the date specified;
- USCIS primary and secondary verification does not support eligible immigration status of a family member;
- the applicant family does not pursue USCIS appeal or informal hearing rights; or
- USCIS appeal or informal hearing decisions are decided against the applicant or an individual family member.

### **13.09 Informal Review Regarding Citizenship Status with LA**

The request for an LA review must be made within 14 days of receipt of the notice offering the review; if an appeal was made to the USCIS, within fourteen days of receipt of that notice. The applicant will be notified that assistance will not be denied until the USCIS appeal process concludes but that assistance may be denied pending the LA informal hearing.

After receipt of a request for an informal review, the hearing is conducted as previously described in this section. If the hearing officer decides that the individual is not eligible, and there are no other eligible family members the LA will deny assistance to the applicant.

Families denied for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same way as reviews for terminations for any other type of fraud.

## **Section 14.0 INFORMAL HEARING PROCEDURES FOR PARTICIPANTS**

### **14.01 Consideration of Circumstances**

In deciding whether to terminate assistance because of action or inaction by members of the family, the LA may consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

The LA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in or were culpable for the action or failure to act will not reside in the unit. The LA may permit the other members of a participant family to continue receiving assistance.

If the LA seeks to terminate assistance because of illegal use, or possession for personal use, of a controlled substance, or pattern of abuse of alcohol, such use or possession or pattern of abuse must have occurred within one year before the date that the LA determines and notifies the participant of the decision to deny or terminate assistance. In determining whether to terminate assistance for these reasons the LA will consider evidence of whether the household member:

- has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol;
- has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol; or
- is participating in a supervised drug or alcohol rehabilitation program and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol.

### **14.02 When a Hearing is Required**

LA hearing procedures will be provided to families in the briefing packet. The LA will give a participant family an opportunity for an informal hearing to consider whether the following LA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and LA policies:

1. determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment;
2. determination of the appropriate utility allowance (if any) for tenant-paid utilities from the LA utility allowance schedule;
3. determination of the family unit size under the LA subsidy standards;

4. determination to terminate assistance for a participant family because of the family's action or failure to act; or
5. determination to terminate assistance because the participant family has been absent from the assisted unit for longer than the maximum period permitted under the LA policy and HUD rules.

In cases described in items 4 and 5 above, the LA will provide the opportunity for an informal hearing before the LA terminates housing assistance payments for the family under an outstanding HAP contract.

#### **14.03 When a Hearing is Not Required**

The LA will not provide a participant family an opportunity for an informal hearing for any of the following reasons:

1. discretionary administrative determinations by the LA;
2. general policy issues or class grievances;
3. establishment of the LA schedule of utility allowances;
4. LA determination not to approve an extension or suspension of a certificate or voucher term;
5. LA determination not to approve a unit or lease;
6. LA determination that an assisted unit is not in compliance with HQS. (However, the LA will provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family);
7. LA determination that the unit is not in accordance with HQS because of the family size; or
8. a determination by the LA to exercise or not exercise any right or remedy against the owner under a HAP contract.

#### **14.04 Notice to the Family**

In the cases described in items 4 and 5 of Section 14.03 entitled "When a Hearing is Not Required," the LA will notify the family that the family may ask for an explanation of the basis of the LA's determination, and that, if the family does not agree with the determination, the family may request an informal hearing on the decision.

In the following cases described in items 4 and 5 of Section 14.02 entitled “When a Hearing is Required,” the LA will give the participant prompt written notice that the family may request a hearing within ten business days of the notification. The LA hearing procedures will be provided to families in the briefing packet. The participant should be given the opportunity to submit a written request to reschedule an informal hearing. The participant will be granted only one opportunity to reschedule an informal hearing.

The notice will contain a brief statement of the reasons for the decision and state that, if the family does not agree with the decision, the family may request an informal hearing on the decision within ten business days of the notification. The informal hearing must be conducted within 60 days from the date of the notice.

#### **14.05 Hearing Procedures**

The LA and participants will adhere to the following policies and procedures:

##### **1. Discovery**

- a. The family will be given the opportunity to examine before the hearing any LA documents that are directly relevant to the hearing. The family will be allowed to copy any such document at the family’s expense. If the LA does not make the document(s) available for examination on request of the family, the LA may not rely on the document at the hearing.
- b. The LA will be given the opportunity to examine, at the LA’s offices before the hearing, any family documents that are directly relevant to the hearing. The LA will be allowed to copy any such document at the LA’s expense. If the family does not make the document(s) available for examination on request of the LA, the family may not rely on the document(s) at the hearing.

##### **2. Representation of the Family**

At the family’s own expense, a lawyer or other representative may represent the family.

##### **3. Hearing Officer**

The hearing will be conducted by any qualified person or persons designated by the LA, other than a person who made or approved the decision under review or a subordinate of this person;

The person who conducts the hearing will regulate the conduct of the hearing in accordance with LA hearing procedures.

##### **4. Evidence**

The LA and the family must have the opportunity to present evidence and to question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

## **5. Issuance of Decision**

The person who conducts the hearing must issue a written decision within 14 calendar days from the date of the hearing, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family will be based on a preponderance of the evidence presented at the hearing.

### **14.06 Effect of the Decision**

The LA is not bound by a hearing decision:

- concerning a matter for which the LA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under LA hearing procedures; or
- contrary to HUD regulations or requirements, or otherwise contrary to Federal, State or local law.

If the LA determines that it is not bound by a hearing decision, the LA will notify the family within 14 calendar days of the determination and of the reasons for the determination.

### **14.07 Mitigating Circumstances for Participants with Disabilities**

When the LA is terminating assistance, the family will be informed that presence of a disability may be considered as a mitigating circumstance during the informal hearing process.

Examples of mitigating circumstances are:

- a person with a cognitive disorder may not have understood the requirement to report increases in income;
- a person may not understand the need to make regular repayments on a promissory note; or
- minor criminal records for public drunkenness may be due to medication; prior incarcerations for being disorderly may be emotional disorder.

### **14.08 Hearing Provisions for Restrictions on Assistance to Non-Citizens**

Assistance to a participant will not be terminated:



1. on the basis of immigration status if the participant, within all requirements and/or dates specified by Section 5.508 of program regulations, takes all necessary steps to provide required documentation;
2. if the LA has not completed primary and secondary verification of immigration documents submitted by the participant in a timely manner;
3. if the USCIS appeals process under Section 5.514 has not been completed;
4. if the ineligible family member has left the household;
5. if assistance to the participant will be prorated;
6. if assistance for a mixed family is continued in accordance with Sections 5.514 and 5.518 of program regulations;
7. if the LA has deferred termination of assistance in accordance with Sections 5.516 and 5.518 of program regulations.

Assistance to a participant will be terminated if:

1. a declaration of citizenship and eligible immigration status is not submitted by the date specified;
2. USCIS primary and secondary verification does not support eligible immigration status of a family member;
3. the participant family does not pursue USCIS appeal or informal hearing rights; or
4. USCIS appeal or informal hearing decisions are decided against the participant or an individual family member.

#### **14.09 USCIS Determination of Ineligibility**

If a family member claims to be an eligible immigrant and the USCIS SAVE system and manual search do not verify the claim, the LA will notify the participant within ten days of his/her right to appeal to the USCIS within 30 days or to request an informal hearing with the LA, either in lieu of or subsequent to the USCIS appeal.

If the family appeals to the USCIS, it must give the LA a copy of the appeal and proof of mailing or the LA may proceed to deny assistance. The time period to request an appeal may be extended by the LA for good cause.

#### **14.10 Informal LA Hearing**

The request for an LA hearing must be made within 14 days of receipt of the notice offering opportunity for the hearing or, if an appeal was made to the USCIS, within 14 days of receipt of that notice. The participant will be notified that assistance will not be terminated until the USCIS appeal process concludes.

After receipt of a request for an informal hearing, the hearing is conducted as previously described in this section. If the hearing officer decides that the individual is not eligible and there are no other eligible family members, the LA will:

- defer termination if the participant family qualifies for deferral; or
- terminate the participant if the family does not qualify for deferral.

If any family member fails to provide documentation or certification as required by the regulation, that member is treated as ineligible. If all family members fail to provide, the family will be terminated for failure to provide.

Participants whose termination is carried out after temporary deferral may not request a hearing since they had an opportunity for a hearing prior to the termination.

Participants whose assistance is pro-rated (either based on their statement that some members are ineligible or due to failure to verify eligible immigration status for some members after exercising their appeal and hearing rights described above) are entitled to a hearing based on the right to a hearing regarding determinations of tenant rent and Total Tenant Payment.

Families terminated for fraud in connection with the non-citizens rule are entitled to a review or hearing in the same way as terminations for any other type of fraud.

## Section 15.0 COMPLAINTS

The LA will investigate and respond to complaints by participant families, owners, employees, and the general public. All complaints will be documented. The LA may require that complaints other than HQS violations be put in writing.

Anonymous complaints are investigated when the person making the complaint indicates **in writing** the details of the specific allegations.

### **Categories of Complaints**

- **Complaints from families:** If a participant family disagrees with an action or inaction by a representative of the LA or owner, complaints will be referred to the supervisor of the LA representative (unless that is the same person who the complaint was lodged against). If a complaint is not resolved, the LA may refer the family to the DHCR Statewide Section 8 Program Representative for resolution. The LA will inform DHCR (preferably via e-mail transmission) prior to referring applicants or participants to DHCR.
- **Complaints from owners:** If an owner disagrees with an action or inaction of the LA or a family, complaints from owners will be referred to the LA office.
- **Complaints from staff:** If an LA staff person reports an owner or family either violating or not complying with program rules, the complaint will be referred to the LA for resolution.
- **Complaints from the General Public:** Complaints or referrals from persons in the community in regard to the LA, a family or an owner will first be referred to the LA. If a complaint is not resolved, it may be referred to the LA's DHCR Statewide Section 8 Program Representative for investigation and ultimate resolution.

## **Section 16.0 PAYMENT STANDARDS**

### **16.01 Setting the Payment Standard**

For each local program in DHCR's Statewide Program, payment standards are established within the allowed "basic range" (90 percent and 110 percent of the applicable HUD published Fair Market Rent (FMR). Specific payment standards for all bedroom sizes in each LA jurisdiction are established per the unique market forces at play in each local program area.

DHCR may, within the HUD-allowed basic range, approve a higher payment standard for a designated part of an LA's FMR area if it is needed to expand housing opportunities outside areas of minority or poverty concentration.

DHCR may also, upon LA request, approve a higher payment standard within the basic range, if required as a reasonable accommodation for a family that includes a person with disabilities.

### **16.02 Revising the Payment Standard**

DHCR and LAs will review payment standard levels annually, concurrent with publication of Fair Market Rents. The LA may also request payment standard adjustments at times other than the annual review when circumstances warrant.

Adequacy/appropriateness of existing payment standard levels will consider:

1. the percentage of annual income families pay for rent under the voucher program (rent burdens);
2. program utilization rates;
3. rents for units currently leased;
4. size and quality of units leased under the program;
5. rental vacancy rates and rents in the market area; and
6. success rates of voucher holders in finding units.

If it is determined that existing payment standard levels present an obstacle to achieving favorable success and/or utilization rates, reasonable rent burdens or that families are generally renting low quality units, DHCR may, within the basic range, raise the payment standard to a higher level. LAs will be responsible for initiating this process by providing DHCR with analyses that document the nature of the problem and recommend specific payment standard levels that will alleviate these hardships.

DHCR, either acting alone or on the advice of an LA, may also reduce a payment standard for a specific bedroom size or all bedroom sizes if analysis shows that a significant percentage of leased units of moderate to high quality have rents that are substantially below the payment standard level.

Before increasing any payment standard, DHCR will conduct a financial feasibility test to ensure that in using the higher standard, adequate funds will continue to be available to assist families in the program.

### **16.03 Reasonable Accommodation**

DHCR Section 8 Local Administrators are authorized to grant exception payment standards between 90% and 110% of the Fair Market Rent (FMR) in instances where a higher standard is necessary to provide reasonable accommodation for a family member with disabilities. This policy applies to cases where the DHCR Local Administrator approves higher payment standards only in cases involving disabilities in conformity with the Americans with Disabilities Act (ADA) and other applicable Federal and State human rights laws.

## **Section 17.0 OWNER RENTS AND RENT REASONABLENESS**

### **17.01 Rent to Owner in the Housing Choice Voucher Program**

The allowable rent to owner is limited primarily by rent reasonableness. However, if the proposed gross rent for a unit is above the payment standard, the impact this will have on a family's maximum allowed rent burden also becomes a factor. At the time a family initially receives Housing Choice Voucher (HCV) assistance, whether a new admission or a move to a different unit, the family share may not exceed 40 percent of the family's monthly adjusted income when the gross rent for the unit exceeds the applicable payment standard for the family.

All owners will be advised that by accepting each monthly housing assistance payment they are certifying that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the same premises. If requested, the owner must give the PHA information on rents charged by the owner for other units in the premises or elsewhere.

### **17.02 Rent Reasonableness Determinations**

The LA will not approve an initial rent or a rent increase in the HCV program without determining that the rent amount is reasonable with respect to rents for comparable unassisted units in the market area.

Reasonableness is determined prior to the initial lease and at the following times:

- before an increase in rent to owner is approved;
- if 60 days before the contract anniversary date, there is a 5 percent decrease in the published Fair Market Rent (FMR) as compared to the previous FMR; and
- if the LA, DHCR or HUD directs that reasonableness be redetermined.

As part of the overall Section 8 Housing Choice Voucher System (SHCVS), DHCR has developed an automated database for analyzing and determining rent reasonableness on an individual unit basis. Data for unassisted units has been gathered from contacts via newspaper classified listings, realtors, professional associations, direct inquiries of owners, market surveys, local tax assessors, waiting list queries and other available sources. In order to ensure uniformity and consistency, the rent reasonableness system establishes standard criteria for all units entered in the database. Unit rents within any/all defined housing market areas are individually identified and segregated and are compared to similar units within the same market area.

The following criteria are included in the system database:

- size (number of Bedrooms);
- location;

- general quality;
- amenities (bathrooms, dishwasher, air conditioning, etc.);
- services;
- age of unit;
- unit type;
- maintenance; and
- utilities.

### **17.03 Rent Reasonableness Methodology**

The DHCR/LA rent reasonableness system is based on unit comparison per the criteria listed above. The system uses a non-weighted total point count determined by summing the responses to questions about each criterion.

Based on the number of points derived for each unit, the automated rent reasonableness system then displays low, average and high rents for units of similar size and type within the same market area.

While LAs are always encouraged to obtain multiple (three or more) comparables for each proposed unit, DHCR currently requires a minimum of two comparable units in order for the unit to pass the rent reasonableness test.

Information on unassisted units only is maintained in the automated database and is updated or purged when that data is more than 12 months old.

## **Section 18.0 SPECIAL HOUSING TYPES**

The Statewide Section 8 Housing Choice Voucher (HCV) Program will only approve one of the following special housing types when it is necessary to provide a reasonable accommodation for a family with disabilities:

- Congregate housing;
- Group homes;
- Shared housing;
- Assisted living facilities; and
- Single room occupancy housing.

The Statewide Section 8 HCV Program will approve other HUD-permitted housing types including:

- Single family dwellings;
- Apartments;
- Manufactured housing; and
- Manufactured home space rentals.



## **Section 19.0 PARTICIPANT PAYMENTS FOR AMOUNTS OWED THE PHA**

LAs assume all day-to-day responsibility for enforcing the requirements of this section and for ensuring that monies collected are promptly returned to DHCR.

A participant is responsible for reporting all changes in income and household composition to the LA within two weeks of the date of such change. If a participant fails to report these changes an overpayment of Housing Assistance Payments (HAP) may occur. The participant is responsible for repaying any amount overpaid on his/her behalf to the Statewide Section 8 Housing Choice Voucher (HCV) Program.

Participant obligations of this nature may be satisfied by either paying the full amount due immediately upon the LA requesting it or through a repayment agreement approved by the LA.

The maximum length of time the LA will enter into a repayment agreement with a family is one year. If the participant is not current on any repayment agreements, the family will not be issued a voucher to move to a new unit. If the family has a repayment agreement in place or had a prior claim and incurs an additional debt to the LA, the additional debt must be paid in full within 30 days. If the debt is not paid in full within 30 days, the participant must be terminated from the program.

An applicant owing money may apply to the program and remain on the waiting list until his/her time of selection. If the applicant still owes money to the Statewide Program when he/she is contacted for selection, the applicant must immediately repay the entire amount due or the applicant's name will be removed from the waiting list.

### **19.01 Repayment Agreements – General**

A participant's obligation of this nature may be satisfied by either paying the full amount due immediately upon the LA's request or through a repayment agreement approved by the LA. A repayment agreement between the LA and a participant is similar to a promissory note, but contains more details regarding the nature of the debt, the terms of payment, any special provisions of the agreement, and the remedies available to the LA upon default of the agreement.

LAs will **not** enter into repayment agreements under the following circumstances:

- the participant already has an agreement in force;
- the LA determines that the family has committed additional program fraud during the term of the repayment agreement; or
- the LA determines that the debt amount is larger than can be paid back by the family within 12 months.

There is no maximum dollar amount for considering whether or not the LA will enter into a repayment agreement. However, if the amount owed cannot, as determined by the LA, be repaid within 12 months, the LA will not give the participant the opportunity to enter into such agreement and the participant will be terminated from the program.

### **19.02 Repayment Agreements - Fraud Recovery**

The LA will provide, in a form or manner prescribed by DHCR, a list of the names and addresses of all participants/landlords who are in repayment agreements due to, but not limited to, the following:

- unreported income; or
- unreported household members.

The LA must also submit a copy of the repayment agreement to DHCR.

The full amount of funds recovered from fraud investigations and determinations must be in the form of a certified check or money order and must be made payable to the **Housing Trust Fund Corporation**. LAs will subsequently be advised on how and when to request payment of the 50% of recovered funds allowed by HUD regulations.

### **19.03 Late Payments**

A payment under a participant repayment agreement will be considered in arrears if payment has not been received by the LA by the close of business on the day in which the payment was due. If the due date is on a weekend or holiday, the due date will be at the close of the next business day.

If the family's repayment agreement is in arrears and the family has not contacted or made arrangements with the LA, the LA will require the family to pay the balance in full. If the participant subsequently fails to pay the full amount due within the time period specified by the LA, the LA will deny the family the ability to move to another unit.

If the family requests a move to another unit, has a repayment agreement in place for the payment of an owner claim, and the payment agreement is in arrears, the family will not be permitted to move with continued HCV assistance until the family pays the balance in full.

If the family requests a move to another unit and is in arrears on a payment agreement for the payment of an owner claim, the family will be required to pay the balance in full or will be terminated from the program.

### **19.04 Minimum Rents**

DHCR has a minimum rent policy of \$50 for all participants in the Statewide Section 8 HCV Program. Adjustments to rent shares for affected families are to be implemented immediately at the next annual review or interim recertification, whichever comes first.

## **Section 20.0 UTILIZING THE ENTERPRISE INCOME VERIFICATION (EIV) SYSTEM**

The LA will use the EIV system to identify potential discrepancies in income reporting by participants during the annual and interim reexamination processes. In order to identify any discrepancies, the LA will use EIV wage/benefit data in conjunction with third party income verification documents received during the annual and interim recertification processes. If there are discrepancies in the amount of income, or if the income is outdated, the LA will use the most accurate and reliable source of income verification.

The data contained and provided by the EIV system will be protected by the LA and should only be used for official program purposes. Data will not be disclosed to anyone in any manner that would violate the privacy of the individuals represented.

The LA must adhere to EIV security awareness measures to ensure that only authorized system users may access the EIV system in order to maintain overall privacy and security compliance.

The LA must use the EIV system to verify household income on such sources as social security, social security disability, SSI, wages and unemployment compensation for each family member. The LA must use the EIV system to compare the income source and amount recorded in the participant-supplied income data and form, HUD 50058 which is maintained in the Public Housing Information Center (PIC) database.

### **Section 20.01 EIV Reports**

When the EIV income data differs from the participant-provided income data by at least \$200.00 per month; this constitutes a “substantial difference.”

In cases where the EIV income data is **NOT** substantially different than participant-reported income, the LA will:

- Use participant documents or third party income verification to calculate anticipated annual income if the EIV income is less than current participant-provided documentation; or
- Use EIV income data unless the participant provides documentation of a change in circumstances when the EIV data is more than the current participant-provided documentation. If acceptable participant documentation is provided to justify a change in circumstances, the participant’s documents will be used to calculate income.

In cases where EIV income is substantially different than the participant-reported income, the LA must:

- Request written third-party verification from the income source in accordance with 24 CFR 5.236(3) (i).
- Review historical income data for patterns of employment, paid benefits, and/or receipt of other income when the LA cannot readily anticipate income such as in the cases of seasonal employment, unstable working hours and suspected fraud.
- Analyze all data and attempt to resolve the income discrepancy.
- Use the most current verified income data (and historical income data if appropriate) to calculate anticipated annual income.

## **Section 20.02 EIV Security Measures**

### ***Section 20.02.1 Handling of Discrepancy Reports***

The LA must handle EIV discrepancy reports in the following manner:

- If a participant disagrees with the discrepancy report issued by the EIV system, a meeting will be scheduled by the LA with the participant to resolve the dispute. All details of the discrepancy report must be documented and the participant will have 15 business days from the date of the meeting to obtain third-party verification of the discrepancy and submit supporting documentation to the LA. All participant-provided information and submitted documentation should be dated not more than 60 days prior to the initial resolution meeting. Once the information is received from the participant, the LA will review and make a final decision within ten business days from the date that the information was received from the participant.
- If a situation arises where facts indicate that a participant has not reported or has under-reported income, a repayment agreement will be executed between the participant and the LA. A revision to the current and future participant's share must also be made. If a participant refuses to enter into a repayment agreement and/or refuses to pay the newly calculated rent, termination of assistance will occur using the established policies and procedures in accordance with DHCR's Administrative Plan.

### ***Section 20.02.2 Records Retention***

During the term of the assisted tenancy and for at least three years thereafter, the LA must retain the documents in the participants' files.

### ***Section 20.02.3 Disposal of Applicant and Participant Records***

All EIV documents must be destroyed at the end of the three-year retention period. They should be destroyed in a manner that would not compromise the confidentiality of the applicants and/or participants. The preferred method for destroying documents is by shredding.

#### ***Section 20.02.4 EIV Security Monitor***

Each local program must designate someone as the agency's **"EIV Security Monitor."** The agency's EIV security monitor will be responsible for ensuring that the minimal EIV security procedures outlined in this document are adhered to.

The local EIV security monitor or other designated personnel must give written notification to the **DHCR designated EIV Security Officer** when:

- a staff member associated with EIV information is no longer employed with the agency, or
- a staff member who previously had access rights to the EIV system no longer has such rights.

#### ***Section 20.02.5 Storage of EIV Documents***

As an added security measure, on an annual basis the DHCR EIV security officer will mail to each local program a listing of local program staff members who have DHCR approved access to EIV wage/benefit data. The local security monitor or other designated staff must review this list and immediately notify the DHCR EIV security officer in writing of any names that should be deleted from the list.

Each LA must maintain a lockable container, file cabinet, or room to store EIV documents that are:

- outdated and are destined to be destroyed; or
- printed but not yet placed in the participants' files.

Caution should be taken to prevent the combining of each of the above types of documents. DHCR recommends that the LA keep each type in separate folders within the lockable receptacle.

#### ***Section 20.02.6 Key Control Form***

Each local program must utilize the **Key Control Form** provided by DHCR to document:

- the number of keys issued for the lockable container, file cabinet or room;

- the names of program staff who are in possession of these keys; and
- a change in the number of keys available or a change in the identity of the staff in possession of the key.

#### ***Section 20.02.7 EIV Security Training***

DHCR will provide annual EIV security training to its local program staff during regional meetings and/or annual conferences.

#### ***Section 20.02.8 Breach of EIV Security Policy***

Any breach of the EIV security policy should be immediately reported to the designated DHCR security officer.

## **Section 21.0 RECERTIFICATIONS**

### **21.01 Interim Income Recertifications**

Families are required to report **all** changes in income and family composition to the LA within two weeks of the date of such change. Families that report a change in income or family composition will be advised by the LA to forward written documentation. During an interim reexamination only information affected by the changes being reported will be reviewed and verified.

Upon receiving any documentation requested from the family, the LA will process interim recertifications in the following circumstances **only**:

- recertifications requested by a participant which result in a decrease in tenant rent;
- recertifications due to an increase in yearly household income which would result in a monthly increase of \$25 or more in participant rent share; or
- recertifications that are a result of a change in family composition and that result in either an increase or decrease in the tenant rent as described above.

In order to add a household member (other than through birth or adoption), including a live-in aide, the family must request that the new member be added to the lease. The new household member must first be approved by the landlord. When the new household member(s) is/are approved by the landlord, the leasing documents must be amended to include the new household member(s).

Before adding the new member to the lease, the individual and participant head of household must undergo a recertification and document the income, assets, and all other information normally required of applicants and participants. Income of a live-in aide is not counted as part of the household income; however, the live-in aide's income must be entered on the HUD 50058 form. If correctly identified in the SHCVS system, this income should be excluded from the total calculation of household income.

The individual to be added to the household must also provide his/her Social Security number (if he/she has one) and must verify his/her citizenship/eligible immigrant status.

**NOTE:** Housing assistance will only be delayed if caused by family action or inaction.

The family's revised annual income will be recalculated taking into account the income and circumstances of the new family member.

### **21.02 Effective Date of Changes for Interim Recertifications**

The LA will give 30 days notice of any rent increase to the family. If notice of an increase in rent is delayed due to a reason beyond the control of the family, the rent increase will be

effective the first of the month after the month in which the family receives a 30-day notice of the amount.

If a participant family has caused the delay, the increase will be effective on the date the LA would have been otherwise able to issue the notice if the family had not caused the delay.

A reduction in participant rent share will be effective the first of the month after the revised family share of rent is determined.

### **21.03 Annual Recertifications**

An annual recertification must be completed for each Section 8 family. The recertification must be completed on or prior to the date of the previous year's recertification.

The information used for reexamination must be current (within 120 days) of the effective date of the recertification. The family should be given a minimum of 90 days, but not more than 120 days, written notice prior to the anniversary date of the recertification.

The LA must require the participant(s) to visit the Section 8 office for the purpose of conducting the recertification, or by having the participant mail the required documents to the Section 8 Office. However, as a reasonable accommodation, the LA may conduct a home visit for the purpose of completing the annual recertification, if the participant is homebound and/or disabled.

The initial recertification notice must inform the family of the required documents and the deadline (or the date to appear in the Section 8 office for the reexamination) for submitting all required documents and requested information.

If the family fails to respond to the initial/first notice, a second notice must be sent to the family informing them that they have failed to submit the required information for recertification. A second request and a copy of the previously sent notice must be sent to the family.

If the family fails to respond to the second notice a termination notice must be mailed to the family.

### **21.04 Verification Guidance and Public Assistance Income Calculations**

HUD regulations stipulate in 24 CFR Part 5.609 (b) (6) that welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) be included in annual income only to the extent that such payments :

- Qualify as assistance under the TANF program as defined in 45 CFR 260.31; and
- Are not otherwise excluded from income under 24 CFR 5.609 (c).



If the welfare assistance payments include an amount specifically designated for shelter and utilities, the amount of welfare assistance income to be included as income should consist of:

- The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus
- The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities; or
- The prorated amount as determined by the Department of Social Services (DSS) for families receiving SSI income.

#### **21.05 Zero Income Families**

When a family reports zero income to the LA, the LA must conduct an in office interim recertification every 30 days. The purpose of the interim recertification is to verify the family's expenses, and to have the family provide an explanation of how their expenses are being paid. Any regular contributions received by the family from outside sources must be considered as household income. For further guidance on this topic, see the HUD Public Housing Occupancy Guidebook, published June 2003.

## **Section 22.0 RESTRICTIONS ON MOVES BY A PARTICIPANT FAMILY**

During the initial 12 months of assisted occupancy, families who resided in the LA's jurisdiction prior to admission and wish to move within the same LA jurisdiction will be allowed to move only under the following conditions:

- the LA has terminated the Housing Assistant Payment (HAP) contract due to an owner's breach of responsibility (e.g.-failure to correct Housing Quality Standards (HQS) violations); or
- the owner and family have agreed to mutual rescission of the lease;

**NOTE:** This provision may only be utilized once within any 12-month period by a participant and owner.

If a family lives in one LA jurisdiction and applies to the waiting list of another LA, the family will be required to utilize the assistance for 12 months in the jurisdiction of the LA where they are being admitted. (See also Section 1.0 "Selection and Admission Policies.")

Families will **not** be permitted to move more than once in a 12-month period unless the LA approves the move based on a documented reason over which the participant has no control (e.g.-owner's failure to correct HQS violations).

As allowed by program regulations, families will **not** be permitted to move outside the LA's jurisdiction under portability provisions during the initial 12 months of assisted occupancy.

The LA may deny permission to move if:

- the family has violated a family obligation;
- the family owes the LA money; or
- the family has moved or been issued a voucher within the last 12 months.

Families are required to give proper written 30-day notice of intent to terminate the lease. During the initial term families may not end the lease unless the family and the owner mutually agree to end the lease and submit in writing to the LA a statement signed by the owner and tenant that the lease is being mutually terminated and the effective date of the termination. If the family moves from the unit before the initial term of the lease ends without the owner's and the LA's approval, it will be considered a serious lease violation and may subject the family to termination from the program.

The family is required to give the LA a copy of the notice to terminate the lease at the same time it gives the notice to the landlord. A family's failure to provide a copy of the lease termination notice to the LA will be considered a violation of family obligations and will cause the family to be terminated from the program. The family will be ineligible for assistance until three years have elapsed from the date of termination.

## **Section 23.0 HOUSING QUALITY STANDARDS (HQS) INSPECTION POLICIES**

Housing Quality Standards (HQS) are minimum standards for tenant-based programs and are required both at initial occupancy and during the term of the lease. HQS standards apply to the building and premises, as well as to the unit. Newly leased units must pass the HQS inspection **before** the beginning date of the assisted lease and Housing Assistance Payments (HAP) contract.

The LA will inspect each unit under contract at least annually. The LA will also have an inspection supervisor perform quality control inspections on the number of files required for file sampling by the Section 8 Management Assessment Program (SEMAP) annually to maintain the LA's required standards and to assure consistency in the LA's program.

This section describes LA procedures for performing HQS and other types of inspections and LA standards for the timeliness of repairs. It also explains the responsibilities of the owner and family and the consequences of non-compliance with HQS requirements for both families and owners.

### **23.01 Requirements and Guidelines for Inspections**

When a Request for Tenancy Approval (RTA) is submitted, the unit being offered must be available for inspection no later than 60 days from the date of RTA submission.

The LA will inspect all units to ensure that they meet Housing Quality Standards (HQS). No unit will be initially placed on the Section 8 Program unless HQS is met. Units will be inspected at least annually, and at other times as needed, to determine if units meet HQS.

The LA must be allowed to inspect the dwelling unit at reasonable times with reasonable notice. The family and owner will be notified of the inspection appointment by mail or by phone. If the owner and/or family can not be at home for the scheduled inspection appointment, the owner or family must make arrangements to enable the LA to enter the unit and complete the inspection.

If the owner or family misses the scheduled inspection and fails to reschedule the inspection, the LA will only schedule one more inspection. If the family misses two inspections, the LA may consider the family to have violated a Family Obligation and may terminate their assistance.

HQS will be the minimum requirement for approving units proposed for Section 8 Housing Choice Voucher (HCV) assistance. Although the LA is **not** required to enforce standards set forth in the New York State Building/Housing Codes and/or the other building/housing codes in any areas within the local LA's jurisdiction, LAs will cooperate, to the greatest extent possible, with local code enforcement officials to obtain uniformity of inspections.

Efforts will be made at all times to encourage owners to provide housing above HQS minimum standards. The LA will not promote any additional acceptability criteria which are likely to adversely affect the health or safety of participant families, or severely restrict housing choice.

All utilities must be in service prior to the HQS inspection. If the utilities are not in service at the time of inspection, the inspector will notify the tenant or owner (whomever is responsible for the utilities according to the Request for Tenancy Approval) to have the utilities turned on. Either the inspector will schedule a reinspection or the owner and tenant will both certify that the utilities are on.

If the tenant is responsible for supplying the stove and/or the refrigerator, the LA will allow the stove and refrigerator to be placed in the unit after the unit has passed all other HQS. The family must then certify that the appliances are in the unit and working. Although not required, the LA may conduct a reinspection if deemed necessary by the LA.

Following are the types of inspections the LA will perform:

1. **Initial**--an inspection that must take place to insure that the unit passes HQS before assistance can begin; c. Conducted upon receipt of Request for Tenancy Approval;
2. **Annual**--an inspection to determine that the unit continues to meet HQS; this inspection must be conducted within 12 months of the last annual inspection;
3. **Complaint**--an inspection caused by the authority receiving a complaint regarding the unit by anyone;
4. **Special**--an inspection requested by a third party (i.e. - HUD request);
5. **Emergency**--an inspection that takes place in the event of a perceived emergency; these will take precedence over all other inspections; and
6. **Supervisory**--quality control inspections on units under lease during any specific LA fiscal year.

### **23.02 Initial HQS Inspections**

#### **If the LA has up to 1250 units:**

The LA will inspect the unit, determine whether the unit satisfies the HQS and notify the family and owner of the determination within 15 days after the family and the owner have submitted a request for approval of tenancy.

#### **If the LA has more than 1250 units:**

The LA will inspect the unit, determine whether the unit satisfies HQS and notify the family and owner of the determination in as timely a manner as possible, but in any case within 30 days.

The LA will make every reasonable effort to conduct initial HQS inspections for the family and owner in a manner that is time efficient and indicative of good customer service.

The LA will periodically review the average time required for a family and owner to have a unit inspected from the time the RTA is submitted by the family and owner to the LA.

The initial inspection will be conducted to:

- determine if the unit and property meet HQS as defined in this Plan;
- document the current condition of the unit to assist in future evaluations whether the condition of the unit exceeds normal wear and tear; and
- document the information to be used for determination of rent reasonableness.

If the unit fails the initial HQS inspection, the family and owner will be advised to notify the LA once repairs are completed.

### **23.03 Annual HQS Inspections**

The LA will conduct HQS inspections within 12 months of the last annual inspection. Special inspections may be scheduled between anniversary dates.

HQS deficiencies which cause a unit to fail must be corrected by the landlord unless it is a deficiency for which the tenant is responsible.

The owner and/or family must allow the LA to inspect the unit at reasonable times with reasonable notice.

Inspections will be conducted on business days only during normal business hours of the LA. Weekend inspections may be conducted under extenuating circumstances at the LA's discretion. The LA will provide the family with as much notice possible when scheduling the inspection.

If the owner or family is unable to be present at the inspection, he/she must reschedule the appointment within five business days.

If the family has been required to be at an inspection, misses the appointment and does not contact the LA to reschedule the inspection, or if the family misses two scheduled inspection appointments, the LA will consider the family to have violated a family obligation and the family's assistance will be terminated in accordance with the termination procedures in this Plan.

#### **23.04 Verification of HQS Deficiencies**

The LA may elect to do a reinspection to comply with 23 CFR 982.404 (a) (3) to verify that all HQS deficiencies have been corrected. A reinspection is not necessary if the LA can obtain verification by other means.

Other than in the case of life threatening deficiencies a LA may accept an owner's and/or family's written certification that the deficiencies have been corrected.

When the deficiencies are the responsibility of the family, the owner or a representative of the owner must also certify that the deficiencies have been corrected.

When the deficiencies are the responsibility of the owner, the family must also certify that the deficiencies have been corrected.

Verification that repairs were completed may be made at the next on-site inspection.

The LA should base the verification process on the severity of corrections to be made and/or the LA's experience with the owner and property.

#### **23.05 Reinspections**

If an on-site reinspection is required and the family and/or owner is not at home for the reinspection appointment, the LA will leave a notice at the unit verifying the inspector's attempt to conduct the inspection.

The LA will schedule a reinspection of the unit. A notice of the reinspection will be provided to the owner and the family. The notice may contain a warning that payments will be abated (in the case of owner's responsibility), or a warning of intent to terminate (in the case of family's responsibility).

#### **23.06 Notification of HQS Failures**

When a unit fails HQS inspection, the LA must notify the owner in writing of the amount of time that will be allowed to correct any items noted as fail. The amount of time allowed will be determined by the LA based on the amount time standards described in Section 23.07.

If the time period allowed to correct the repairs has elapsed and the LA has not granted an extension of time, the family must select another unit for assistance.

#### **23.07 Time Standards for Repairs**

**Emergency items** which endanger the family's health or safety must be corrected by the owner within 23 hours of notification. (See "Emergency Repair Items," Section 24.13.)

For **non-emergency items**, repairs must be made within 30 days.

For **major repairs**, the LA may approve an extension beyond 30 days.

### **23.08 Rent Increases**

Rent to owner increases may not be approved if the unit is in a failed condition.

### **23.09 Move Out /Vacate Inspections**

The LA may, at their discretion, conduct a move-out inspection at the request of the tenant and/or landlord. If possible, both the tenant and landlord should be present for this inspection.

### **23.10 Special/Complaint Inspections**

If at any time the family or owner notifies the LA that the unit does not meet HQS, the LA will conduct an inspection.

The LA will inspect only the items which were reported, but if the inspector notices additional deficiencies that would cause the unit to fail HQS, the responsible party will be required to make the necessary repairs.

If the annual inspection date is within 120 days of a special inspection and as long as all items are inspected that are included in an annual inspection, the special inspection will be categorized as annual and all annual procedures will be followed.

### **23.11 Quality Control Inspections**

Quality control inspections will be performed by the LA on the number of files required by SEMAP. The purpose of quality control inspections is to ascertain that each inspector is conducting accurate and complete inspections and to ensure that there is consistency among inspectors in application of HQS.

The sampling of files will include recently completed inspections (within the prior three months), a cross-section of neighborhoods, and a cross-section of inspectors.

### **23.12 Accessibility Modifications to HQS**

Modifications or adaptations to a unit due to a disability must meet all applicable HQS.

### **23.13 Emergency Repair Items**

The following items are considered of an emergency nature and must be corrected by the owner or tenant (whoever is responsible) within 23 hours of notice by the inspector:

- lack of security for the unit;
- waterlogged ceiling in imminent danger of falling;
- major plumbing leaks or flooding;
- natural gas leak or fumes;
- electrical problem which could result in shock or fire;
- no heat when outside temperature is below the Fahrenheit degree level consistent with LA's local building codes and temperature inside is below the Fahrenheit degree level consistent with LA's local building codes;
- inoperable smoke detector;
- utilities not in service;
- no running hot water;
- broken glass where someone could be injured;
- obstacle which prevents tenant's entrance or exit; and
- lack of functioning toilet.

In those cases where there is leaking gas or potential of fire or other threat to public safety, and the responsible party cannot be notified or it is impossible to make the repair, proper authorities will be notified by the LA.

If the emergency repair item(s) are not corrected in the time period required by the LA and the owner is responsible, the housing assistance payment will be abated and the HAP contract will be terminated.

If the emergency repair items are not corrected in the time period required by the LA and it is an HQS breach which is a family obligation, the LA may terminate the assistance to the family.



### **23.14 Lead Based Paint**

The Code of Federal Regulations (23 CFR 35 (M) 35.115 (12)) allows for the performance of an evaluation or lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface, as required by the “rule,” to be delayed for a reasonable time during a period when the weather conditions are unsuitable for conventional construction activities. However, families/persons with children under the age of six with a presence of non-environmental intervention blood lead levels (EIBLL) will not be allowed to **move into a unit** unless it passes the HQS inspection, including required lead testing and clearance.

If a child under the age of six with EIBLL resides in a unit that fails re-inspection, the family must move to an approved unit or lose the rental subsidy.

### **23.15 Smoke Detectors**

Inoperable smoke detectors are a serious health threat and will be treated by the LA as an emergency (23-hour) fail item. If the smoke detector is not operating properly, the LA will contact the owner by phone and request the owner to repair the smoke detector within 23 hours. The LA will reinspect the unit the following day.

If the LA determines that the family has disconnected the smoke detector (by removing batteries or other means), the family will be required to repair the smoke detector within 23 hours and the LA will reinspect the unit the following day.

The LA will issue a written warning to any family determined to have purposely disconnected the unit’s smoke detector. The warning will state that deliberate disconnection of the unit’s smoke detector is a health and fire hazard and is considered a violation of HQS.

### **23.16 Determination of Responsibility**

Certain HQS deficiencies are considered the responsibility of the family:

- tenant-paid utilities not in service;
- failure to provide or maintain family-supplied appliances; and
- damage to the unit or premises caused by a household member or guest beyond normal wear and tear. Normal wear and tear is defined as items which could not be charged against the tenant's security deposit under state law or court practice.

The owner is responsible for all other HQS violations, including vermin infestation even if alleged to have been caused by the family's living habits. However, if such infestation is serious and repeated, it may be considered a lease violation and the owner may evict for serious or repeated violation of the lease. The LA may terminate the family's assistance on that basis. The owner or participant may appeal the determination to the LA within five business days of

the inspection. If the family is responsible for damages but the owner carries out the repairs, the owner may bill the family for the cost of the repairs.

### **23.17 Consequences When Owner is Responsible (Non-Emergency Items)**

When it has been determined that a unit on the program fails to meet HQS, and the owner is responsible for completing the necessary repair(s) in the time period specified by the LA, the assistance payment to the owner will be abated.

A Notice of Abatement will be sent to the owner stating that the abatement will be effective from the day after the date of the failed inspection. The LA will determine the deadline for completing deficiencies, depending on the nature of the repair(s) needed.

The LA will also determine the time period for which abated units should be inspected, depending on the owner's notification that the work has been completed.

Upon notification that the required work is completed, the LA will advise both owners and tenants of the reinspection date. If the owner makes repairs during the abatement period, payment will resume on the day the unit passes inspection.

No retroactive payments will be made to the owner for the period of time the rent was abated and the unit did not comply with HQS. The notice of abatement states that the tenant is not responsible for the LA's portion of rent that is abated.

### **23.18 Reduction of Payments**

The LA may grant an extension in lieu of abatement in the following cases:

- the owner has a good history of HQS compliance;
- the failed items are minor in nature;
- there is an unavoidable delay in completing repairs due to difficulties in obtaining parts or contracting for services;
- the owner makes a good faith effort to make the repairs;
- the repairs are expensive (such as exterior painting or roof repair) and the owner needs time to obtain the funds; or
- the repairs must be delayed due to climate conditions.

The extension will be made for a period of time to be determined by the LA. At the end of that time, if the work is not completed or substantially completed, the LA may terminate assistance.

### **23.19 Termination of Contract**

If the owner is responsible for repairs and fails to correct all the deficiencies cited prior to the end of the abatement period, the owner will be sent a HAP Contract Proposed Termination Notice. Prior to the effective date of the termination, the abatement will remain in effect.

If repairs are completed before the effective termination date, the termination may be rescinded by the LA if the tenant chooses to remain in the unit. No more than two HQS inspections will be conducted after the termination notice is issued.

### **23.20 Consequences When Family Is Responsible**

If emergency or non-emergency violations of HQS are determined to be the responsibility of the family, the LA will require the family to make any repairs or corrections within a time period consistent with the owner requirement for completing deficiencies. If the repairs or corrections are not made in this time period, the LA may terminate assistance to the family, after providing an opportunity for an informal hearing. Extensions in these cases must be approved by the LA. The owner's rent will not be abated for items which are the family's responsibility.

If the tenant is responsible and corrections are not made, the HAP contract will terminate when assistance is terminated.

## **Section 24.0 SCREENING OF APPLICANTS**

### **24.01 Screening of Applicants**

As part of LA processes for determining eligibility for participation, the LA will conduct criminal background checks on all adult household members, including live-in aides. These checks will be used to identify circumstances under which assistance must be denied in accordance with the requirements of Section 982.553 of program regulations.

All adult applicant family members will be required to sign a release of information which will authorize the LA to access criminal records.

This check may be made through state or local law enforcement or court records in those cases where the household member has lived in the local jurisdiction for the last three years. If the individual has lived outside the local area, the LA may contact law enforcement agencies where the individual had lived or request a check through the FBI's National Crime Information Center (NCIC). The LA will also check with the State sex offender registration program to determine if an individual is subject to a lifetime registration requirement as a State sex offender.

The LA **will** permanently deny assistance to a family if any member of the family has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally-assisted housing.

The LA **will** permanently deny assistance to anyone subject to a lifetime registration requirement as a State sex offender.

Additional screening is the responsibility of the owner. Upon the written request of a prospective owner, the LA will provide any factual information or third party written information they have relevant to a voucher holder's history of, or ability to, comply with material standard lease terms or any history of drug trafficking.

The LA will not screen family behavior or suitability for tenancy. The LA will not be liable or responsible to the owner or other persons for the family's behavior or the family's conduct in tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before LA approval of the tenancy, the LA will inform the owner that screening and selection for tenancy is the responsibility of the owner. The owner is responsible for screening families based on their tenancy histories, including such factors as:

- payment of rent and utility bills;
- caring for a unit and premises;
- respecting the rights of other residents to the peaceful enjoyment of their housing;
- drug-related criminal activity or other criminal activity that is a threat to the health, safety or property of others; and
- compliance with other essential conditions of tenancy.

## **24.02 Administration**

All screening and termination of assistance procedures will be administered uniformly, fairly and in such a way as not to violate rights to privacy or discriminate on the basis of race, color, nationality, religion, familial status, disability, sex or other legally protected groups.

To the maximum extent possible, the LA will involve other community and governmental entities in the promotion and enforcement of this policy. This policy will be posted on the LA's bulletin board and copies made readily available to applicants and participants upon request.

## **24.03 Confidentiality of Criminal Records**

The LA will ensure that any criminal record received is maintained confidentially, not misused or improperly disseminated, and must be destroyed once the purpose for which it was requested is accomplished.

All criminal reports, while needed, will be housed in a locked file with access limited to LA staff individuals responsible for screening and determining eligibility for initial and continued assistance.

Misuse of the above information by any employee of the LA will be grounds for termination of employment.

If the family is determined eligible for initial or continued assistance, the criminal report must be shredded as soon as the information is no longer needed for eligibility or continued assistance determination.

If the family's assistance is denied or terminated, the criminal record information must be shredded immediately upon completion of the review or hearing procedures and a final decision has been made.

The LA will document in the family's file the circumstances of the criminal report and the date the report was destroyed.

## **Section 25.0 SECTION 8 HOME OWNERSHIP**

### **25.01 Introduction**

Under the Section 8 Home Ownership option, DHCR and its Statewide Program Local Administrators (LAs) provide tenant-based assistance to an eligible family that purchases a dwelling unit to be occupied by the family. All HUD and DHCR rules for rental vouchers apply to home ownership vouchers except where superseded in the following sections.

Upon written application from an LA, DHCR will review LA readiness, capacity and local program procedures and authorize the home ownership option if the LA (together with any identified teaming partner) meets DHCR-established requirements for implementing this program option. As part of the LA application and authorization process, DHCR and the LA will identify any additional technical assistance that is necessary in order to implement or enhance local home ownership activities.

Experience with low-income home ownership programs has demonstrated that quality counseling is essential for successful home ownership and prevention of mortgage defaults. LAs seeking authorization to implement home ownership will be asked to demonstrate their experience and capacity in this area, either within their own agency's programs and services or through partnership with another entity.

Regardless of whether the LA plans to implement home ownership programming independently or in conjunction with another agency experienced in home ownership, they will be required to demonstrate that they have housing counseling experience generally consistent with that provided under HUD's housing counseling program.

Pursuant to the New Freedom Initiative (Executive Order 13217, dated February, 2001), DHCR and the LAs will make every effort to ensure its home ownership policies afford disabled individuals (or families) opportunity to participate fully in community life, and to remove any barriers that may impede a disabled person's opportunity for community placement.

### **25.02 Permitted Ownership Arrangements**

The home ownership option may be utilized in two types of housing:

- a unit owned by the family in which one or more family members hold title to the home; homes occupied under a lease-purchase agreement are eligible; and
- a cooperative unit in which one or more family members hold membership shares in the cooperative.

### **25.03 Determination of Family Eligibility**

Unless otherwise approved by DHCR, any family to be considered for home ownership assistance must already be an eligible participant that has been admitted to the Housing Choice Voucher (HCV) rental assistance in the LA's local program area for at least 12 months. The 12-month minimum may be waived or reduced upon application to DHCR, or because of a port-in. The individual or family must also be in compliance with all stated family obligations. If applicable, the family must have fully satisfied any repayment agreements. The local program manager may set higher eligibility standards, upon application to DHCR due to market conditions.

LAs will be responsible for all normal Section 8 eligibility determinations and for ensuring that families meet employment and minimum annual income requirements established by program regulations. DHCR has adopted the federal minimum annual income from full-time employment (not less than an average of 30 hours per week) for non-disabled/non-elderly individuals or families at the federal minimum hourly wage X 2000 hours (currently \$10,300/year). However, the local program manager may set the minimum annual income from employment at a higher level, upon approval from DHCR. At the commencement of the Home ownership assistance, the minimum annual income must be continuous for at least one year prior to application for a home ownership voucher.

For elderly or disabled individuals or families, income from employment is waived. However, the minimum income must be from a stable source (such as Social Security benefits) with a minimum monthly benefit standard for SSI individual living alone (effective January 1, 2006, \$690 per month).

The LA will also be responsible for determining that families satisfy first-time homeowner requirements established by program regulations and that they are "credit ready" and have not defaulted on any mortgage used to purchase a home under the home ownership option. A family is not eligible if any family member at time of default has previously received home ownership assistance and defaulted on a mortgage.

### **25.04 Home ownership Counseling**

Section 536:8(y) of the Quality Housing and Work Responsibility Act of 1998 provides that a family must participate in a home ownership and housing counseling program before commencement of Section 8 home ownership assistance.

LAs will be responsible for providing pre-assistance and post-purchase counseling including:

1. home maintenance;
2. budgeting and money management;
3. credit counseling;



4. how to negotiate the purchase price of a home;
5. how to obtain home ownership financing and loan preapprovals (including a description of types of financing that may be available);
6. how to find a home (including information about home ownership opportunities, schools, and transportation in the LA's jurisdiction);
7. advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;
8. information on fair housing (including fair housing lending and local fair housing enforcement agencies) and information about the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C.2601 *et seq.*); and
9. information on State and Federal truth-in-lending laws and how to identify and avoid loans with oppressive terms and conditions.

Counseling may be provided by the LA or another entity such as a HUD-approved housing counseling agency or by both the LA and another entity. If the LA is providing counseling but is not a HUD-approved housing counseling agency, or if the LA employs the services of another entity that is not a HUD-approved counseling agency, the LA must demonstrate that its counseling program is generally consistent with home ownership counseling provided under HUD's Housing Counseling program.

The individual or family must complete all home buyer education classes and receive housing counseling before home ownership voucher assistance can be authorized. In rare instances, participation in home buyer education may occur after the home closing, but only upon prior written approval from DHCR.

### **25.05 Home Inspections**

Two kinds of physical inspections are required in the home ownership option (in addition to, and separate from, any lender required inspections):

- an HQS inspection by the Local Administrator; and
- an independent professional home inspection by an inspector used in the private market by home buyers.

The independent professional inspector must be selected, hired and paid for by the family. A family's Family Self-Sufficiency (FSS) escrow account may be accessed for this purpose, if applicable. Home inspectors must have certification from the American Society of Home Inspectors or a similar national organization.

In instances where a family applies for and is eligible for a U. S. Department of Agriculture Rural Development (USDA-RD) single-family mortgage, the independent professional inspection required by USDA may also be used to satisfy the Section 8 independent professional inspection requirement, so long as the person performing the inspection is qualified to report on property conditions including major building systems and components. The LA may disapprove the home or unit on the basis of the report.

The HQS inspection performed by the LA will indicate the current physical condition of the unit and any repairs necessary to ensure that the unit is safe and habitable. The purpose of the independent home inspection is to identify any home defects and to assess the adequacy and life span of the major building components. The home must pass an initial HQS inspection before home ownership voucher assistance can be authorized. Any additional HQS inspections for subsequent years are at the option of the local program administrator.

#### **25.06 Determination of Home Ownership Assistance Levels**

The LA will be responsible for determining the amount and distribution of the home ownership assistance to be provided on a family's behalf. When the family applies for the mortgage(s), the LA will provide information to the lender(s) on the total tenant payment (TTP) and Payment Standard in effect at that time. Pursuant to program regulations, once home ownership assistance commences for the home or unit, the payment standard will never be less than the payment standard at the time home ownership payments begin.

The voucher assistance payment may be made directly to the lender or the family. Pursuant to program regulations, the LA will also be responsible for determining if a family is eligible for continued tenant-based assistance if the family wishes to move.

#### **25.07 Mortgage Financing and Down Payments**

DHCR and the LA may not require the use of a specific lender. However, both DHCR and the LA may require certain qualifications of potential lenders, and may establish prohibitions on certain forms of financing and terms. The home the family intends to purchase must be affordable, and DHCR or the LA may disapprove any proposed financing or re-financing if either DHCR or the LA or the housing counseling partner determines the debt is unaffordable or loan terms are oppressive.

Mortgage financing affordability will be defined by the following debt-to-income ratios:

- The front-end ratio (housing debt-to-income) should be no higher than 40%, and
- The back-end ratio (all debt-to-income) should not exceed 45%.

This may be waived or modified upon application to DHCR.

DHCR and the LA require a minimum down payment that equals three percent of the sale price. The family contribution toward the down payment should be at least one percent of the sale price and come from the family's personal resources. A FSS escrow account may be used for this purpose, if applicable. If a family is utilizing a USDA-RD single family mortgage loan product, or similar government mortgage product, then the down payment requirements may be changed or waived by the LA.

The mortgage loan financing used for the purchase of the home must meet one of the following: provided, insured, or guaranteed by state or federal government; complies with secondary mortgage market underwriting requirements; complies with generally accepted private sector underwriting standards. A seller-financed mortgage lending arrangement, or lease-purchase agreements, will be permitted, but only upon written application to and written approval from DHCR.

### **25.08 Home Search**

The family is responsible for finding an eligible home or unit to purchase. The LA may establish time limits for a family to locate a home to purchase and to close on a home. The LA may not steer or restrict the family to certain sellers or neighborhoods.

A family may choose to purchase an eligible dwelling that is owned or substantially controlled by DHCR or the LA, provided the family signs a written assurance that it is freely selecting the dwelling without pressure or steering. Also, under these circumstances, an independent agency must perform certain administrative functions such as the HQS inspection, review of the independent professional inspection report, review of contracts for sale, review of sales price and any DHCR or LA-provided financing.

Under home ownership program regulations, the LA has the right to disapprove the seller if the seller has been debarred or suspended by either DHCR or HUD from participation in any housing program.

### **25.09 Post-purchase Activities**

LAs will be responsible for establishing such post-purchase monitoring and counseling procedures as may be necessary to ensure that families do not risk mortgage delinquency or default. Ongoing monitoring and counseling should include basic home maintenance guidance, and post-purchase budgeting.

### **25.10 Portability**

Families who are determined eligible for the home ownership option may exercise the option outside of the LA jurisdiction if the receiving PHA is administering a Section 8 home ownership option and is accepting new families into its program.

### **25.11 Length and Continuation of Assistance**

Section 8 assistance will only be provided for the period the family is in residence in the home. The maximum length of time a family may receive home ownership assistance is 15 years if the mortgage has a term of at least 20 years, unless the family is elderly or disabled. Time limits do not apply to elderly or disabled families.

A home ownership family may purchase another home with Section 8 assistance provided there is no mortgage loan default and the family is in compliance with the Statement of Homeowner Obligations (HUD Form 52649). The 15-year maximum assistance term may be extended for good cause on a case by case basis upon application to DHCR.

### **25.12 Recapture Provisions and Re-sales**

There are no profit recapture provisions in the Home Ownership Voucher Program. Upon sale of the home, a family may move and utilize its voucher for either rental assistance or home ownership assistance. If home ownership assistance is chosen, then the term limits remain in effect and the family will be entitled to utilize the remaining term. With regard to the payment standard and sale of the home, voucher rules covering relocation become effective. During this time the payment standard and voucher size will be adjusted to accommodate the family size or composition.

A family may sell its home and move to another jurisdiction and continue with home ownership assistance, but only if the new jurisdiction is operating a home ownership program and accepting new families.

### **25.13 Defaults**

If a family in the home ownership option defaults on a first mortgage loan (and/or second home mortgage loan if utilized in conjunction with Section 8 home ownership assistance), the family will not be permitted to use the home ownership option voucher to purchase another house. The family may use its voucher for rental assistance if after mortgage default it remains in compliance with voucher family obligations.

### **25.14 Family Obligations**

Before commencement of home ownership assistance, the family must sign HUD Form 52649, Statement of Homeowner Obligations. To continue to receive home ownership assistance, a family must comply with the following family obligations:

1. The family must comply with the terms of any mortgage which secures the debt used to purchase the home, and any refinancing of such debt; under refinancing, no cash-outs allowed.

2. During the time the family is receiving home ownership assistance, the family may not sell, convey or transfer any interest in the home to any entity or person. Further, the family must maintain the home as their principal residence for the period of time the family is receiving the assistance. Subletting or leasing the home is not permitted, but may be temporarily waived upon written application to DHCR.
3. The family must supply required information regarding income and family composition on an annual basis in order to calculate the appropriate TTP and Payment Standard during the term of home ownership assistance.
4. The family must immediately notify the LA if household income decreases and must provide all information necessary to complete an interim recertification.
5. The family must provide information on the following: any mortgage or other debt used to purchase the home and any refinancing of such debt; any satisfaction or payment of mortgage debt; any sale or other transfer of any interest in the home; and the family's home ownership expenses. The family will sign an authorization allowing the LA and all lenders holding mortgages to the family's home to disclose to each other information as it pertains to the mortgage application and other records which each party may require.
6. The family must immediately notify the LA if the family becomes delinquent and/or defaults on a mortgage securing any debt incurred to purchase the home, and must agree to work with the LA's housing counselors to work out terms for becoming current, or other acceptable loss mitigation work-out plans.
7. The family must, at annual recertification, document to the satisfaction of the LA that the family is current on mortgage, insurance, taxes and utility payments; and replacement/reserve accounts; co-operative fees, condominium fees, or land-lease payments, if applicable.
8. As required by the LA, the family must participate in ongoing post purchase counseling and/or attend other courses related to home ownership.
9. The family must promptly notify the LA in writing of the birth, adoption or court-awarded custody of a child or the presence of a live-in-aide.
10. The family must allow the LA to inspect the house at reasonable times and after reasonable notice.
11. Loss of employment: if a family loses a full-time job, the minimum family share will be set at \$50.00 per month. The family must attend post-purchase counseling, and be encouraged to join a FSS program, if available. The LA will also perform interim recertifications on a monthly basis, in order to confirm the family is seeking full-time employment.

### **25.15 Family Self-Sufficiency (FSS) and Home Ownership**

A Section 8 head of household that is currently participating in an FSS program may, during the term of its FSS contract, pursue home ownership and utilize his/her voucher assistance for home ownership purposes (in conjunction with this or any other local, state or federal home ownership program). If home ownership occurs, the family may also continue to fulfill the remaining term of its FSS contract and continue to accrue escrow, if applicable.

Under these circumstances, the Individual Training and Services Plan (ITSP) must be amended to include attendance at post-purchase counseling.

The topics to be covered in post-purchase counseling may include:

- home maintenance;
- managing debt after home ownership occurs;
- protecting your assets;
- investing in your future;
- building wealth;
- record keeping;
- energy efficiency ;
- home safety and security;
- preventive maintenance;
- basic home repair;
- improvements that increase the home's value;
- working with a contractor; and
- landscaping.

## **Chapter 26.0    SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

DHCR will conduct an annual or biennial SEMAP review of each of its local programs. The review will cover each program fiscal year: April 1<sup>st</sup> through March 31<sup>st</sup>.

In addition to other documents, records and reports that are required to be maintained for the SEMAP review, each LA must maintain a record/report of the SEMAP indicators identified below.

### **Indicator #5: HQS Quality Control Inspections**

A supervisory inspection log, including the dates of the first and second inspections; the names of the first and second inspectors; and the tenants' names and addresses must be maintained.

### **Indicator #6: HQS Enforcement**

A failed inspection log including the tenants' names and addresses; name of inspector(s); and the fail date(s) must be maintained.

**END OF  
SECTION 8 ADMINISTRATIVE PLAN  
DHCR STATEWIDE SECTION 8 PROGRAM**